165-463

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~702~~. 321

THE UNITED STATES, APPELLANT,

vs.

THE WINONA AND ST. PETER RAILROAD COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED AUGUST 16, 1895.

(15992.)

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1 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit at the May term, 1895, of said court, begun and held at the United States court-house, in the city of St. Paul, Minnesota, on the first Monday, to wit, the sixth day of May, A. D. 1895, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn, and Honorable Amos M. Thayer, circuit judges.

Attest:

[SEAL.] JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals Eighth Circuit.

Be it remembered that heretofore, to wit, on the third day of December, A. D. 1894, a transcript of record, in pursuance of an appeal allowed by the circuit court of the United States for the district of Minnesota, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit in the case of The United States of America, appellant, vs. The Winona & St. Peter Railroad Company et al., appellees, which said transcript of record is in the words and figures following, to wit:

2 In the circuit court of the United States in and for the district of Minnesota. Second division. 1

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
THE WINONA & ST. PETER RAILROAD COMPANY et al., defendants.

Bill of complaint.

To the Honorable the Judges of the Circuit Court for the District of Minnesota: 2

The United States of America, by their Attorney-General, brings this their bill against the Winona & St. Peter Railroad Company, The Winona & St. Peter Land Company, The Minnesota Land and Investment Company, corporations duly organized and incorporated under the laws of the State of Minnesota, and transacting business within the said State, George Pechtel, E. H. Dickson, Michael Schroepfer, Wenzel Remiger, John W. Kolbe, Fritz Winkelmann, Heinrich Dohrman, Ferdinand Trebesh, Fred Mielke, Wilhelm Strassburg, Karl Fast, Mattias Garvs, Heinrich Kaehler, Theodore Weber, Margaret Bertrand, Henry G. Beussmann, Thomas McQuat, William F. Gieseke, Blasius Haala, John Upson, Franz 3
2½ Schroepfer, Terry Crumlett, George Stelzer, jr., John Stelzer, Joseph Sellner, Wenzel Schiller, Friedrick W. Hormann, Georg Pachtl, John W. Kolbe, Michl Schrepfer, Barnard Blomeke, Adeline Mielke, Otto Mielke, Claus Meinert, William Strausburg, Friedrick Alwin, Ludwig Remus, Henry Kaehler, Charles Gamble, 4
Christopher Mainzer, John Girg, Jacob Brust, John Groebner, Frank Augustin, Carl Piske, John Haala, Charles Feirer, Michael Sturm, Samuel D. Peterson, Hans Knudson, Jacob Runck, August Rogotzke, John Weber, John H. Weber, Dorothea Wagner, George

Schermann, Peter Yackel, John Yaeger, William Goehring, Emil Altennatt, Wolfgang Brandl, George Lent, J. Duncan, John Novah, George Ebilcison, M. Schultz, Edward Casey, Jane McQuat, each and all citizens of and residing within the said State of Minnesota.

Humbly complaining showeth your orator unto your honors:

First. That the above-named defendant The Winona & St. Peter Railroad Company is and at all times hereinafter stated since its organization was one of the railroad corporations of the State of Minnesota.

Second. That under and pursuant to an act of the legislature of the Territory of Minnesota entitled "A bill to incorporate the Transit Railroad Company," approved March 3rd, A. D. 1855, a railroad corporation was duly created and organized under the name and style of the Transit Railroad Company. That in pursuance of said act and the organization aforesaid, the said Transit Railroad Company became and continued to exist as a railroad company under the title and name aforesaid within the said Territory and State of Minnesota, and became and was one of the companies entitled to and competent to take and hold the grants and benefits conferred upon the Territory and future State of Minnesota by the provisions of an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3rd, A. D. 1857.

Third. That subsequent to the creation of said Transit Railroad Company by various acts of the legislature of said Territory and State of Minnesota the title of said Transit Company has become duly changed, so that the same is now called and known as The Winona & St. Peter Railroad Company, one of the defendants in this action, and all the rights, claims, immunities, and franchises which were conferred upon said Transit Railroad Company have been by various legislative and other acts of the Territory and State of Minnesota conferred upon and vested in said Winona & St. Peter Railroad Company, and all the rights and franchises which the said defendant now has, claims, or possesses are only by virtue of its succession to the rights, claims, immunities, and franchises of the aforesaid Transit Railroad Company.

Fourth. That by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3rd, A. D. 1857, there was granted by the United States to the Territory of Minnesota every alternate section of land designated by odd numbers for six sections in width on each side of certain railroads and branches to aid in the construction of such lines of railroad in the said Territory of Minnesota.

Fifth. That by section 1 of said act of Congress there was granted to said Territory of Minnesota, for the purpose of aiding in

the construction of a railroad from Winona via Saint Peter, in said Territory, to a point on the Big Sioux River south of the forty-fifth parallel north latitude, every alternate section of land designated by odd numbers for six sections in width on each side of said road and branches, subject, however, to the reservations, exceptions, and provisos contained in said section and in the remaining sections of 11
said act. That by section 1 of said act there was expressly reserved and excepted from said grant, and which did not pass thereby, all such aforesaid sections or parts thereof as it might appear had been sold by the United States or otherwise appropriated by it, or to which it might appear the right of preemption had attached prior to the time when the line or route of said road and branches had been definitely fixed. That it was further provided in said act that if it should appear that the United States have, when the lines and routes of said roads and branches are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the rights of 12
settlers had attached thereto, other lands of the United States nearest to the tiers of sections above specified of an amount of alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of preemption have attached as aforesaid, or the rights of settlers had otherwise attached, should be granted in lieu thereof.

Sixth. That the said act of Congress entitled as aforesaid, approved March 3rd, 1857, was subsequently amended by an act of 13
Congress entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3rd, A. D. 1865, increasing the aforesaid grant of lands to ten sections per mile, and that the said amendatory act contained the same restrictions, limitations, reservations, and exceptions contained in the said original granting act of March 3rd, A. D. 1857.

Seventh. That the said Transit Railroad Company, organized as hereinbefore alleged, was organized for the purpose of constructing 14
and undertook to construct the line of railroad hereinbefore described, from Winona via Saint Peter to a point on the Big Sioux River south of the forty-fifth parallel of latitude, and as such became entitled to the benefits of said act of March 3rd, A. D. 1857, and the acts amendatory thereof, given in aid of such railroads; and as hereinbefore alleged, the said defendant, The Winona and Saint Peter Railroad Company, became and is the successor in interest of the said Transit Railroad Company to all the benefits and provisions of said act of March 3rd, A. D. 1857, and the act amenda- 15
tory thereof, subject, however, to all of the conditions and exceptions therein, and in each of said acts contained.

6 Eighth. That said Transit Railroad Company, and the said defendant as its successor, under and by virtue of its corporate existance and franchises and rights granted to it by the Territory of Minnesota for the purpose of entitling itself to the grants and benefits conferred by the aforesaid act of Congress, did at various times and dates definitely fix portions of the line or 16

Schermann, Peter Yackel, John Yaeger, William Gochring, Emil Altennatt, Wolfgang Brandl, George Lent, J. Duncan, John Novah, George Ebilcison, M. Schultz, Edward Casey, Jane McQuat, each and all citizens of and residing within the said State of Minnesota.

Humbly complaining showeth your orator unto your honors:

First. That the above-named defendant The Winona & St. Peter Railroad Company is and at all times hereinafter stated since its organization was one of the railroad corporations of the State of Minnesota.

Second. That under and pursuant to an act of the legislature of the Territory of Minnesota entitled "A bill to incorporate the Transit Railroad Company," approved March 3rd, A. D. 1855, a railroad corporation was duly created and organized under the name and style of the Transit Railroad Company. That in pursuance of said act and the organization aforesaid, the said Transit Railroad Company became and continued to exist as a railroad company under the title and name aforesaid within the said Territory and State of Minnesota, and became and was one of the companies entitled to and competent to take and hold the grants and benefits conferred upon the Territory and future State of Minnesota by the provisions of an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3rd, A. D. 1857.

Third. That subsequent to the creation of said Transit Railroad Company by various acts of the legislature of said Territory and State of Minnesota the title of said Transit Company has become duly changed, so that the same is now called and known as The Winona & St. Peter Railroad Company, one of the defendants in this action, and all the rights, claims, immunities, and franchises which were conferred upon said Transit Railroad Company have been by various legislative and other acts of the Territory and State of Minnesota conferred upon and vested in said Winona & St. Peter Railroad Company, and all the rights and franchises which the said defendant now has, claims, or possesses are only by virtue of its succession to the rights, claims, immunities, and franchises of the aforesaid Transit Railroad Company.

Fourth. That by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3rd, A. D. 1857, there was granted by the United States to the Territory of Minnesota every alternate section of land designated by odd numbers for six sections in width on each side of certain railroads and branches to aid in the construction of such lines of railroad in the said Territory of Minnesota.

Fifth. That by section 1 of said act of Congress there was granted to said Territory of Minnesota, for the purpose of aiding in

the construction of a railroad from Winona via Saint Peter, in said Territory, to a point on the Big Sioux River south of the forty-fifth parallel north latitude, every alternate section of land designated by odd numbers for six sections in width on each side of said road and branches, subject, however, to the reservations, exceptions, and provisos contained in said section and in the remaining sections of 11
said act. That by section 1 of said act there was expressly reserved and excepted from said grant, and which did not pass thereby, all such aforesaid sections or parts thereof as it might appear had been sold by the United States or otherwise appropriated by it, or to which it might appear the right of preemption had attached prior to the time when the line or route of said road and branches had been definitely fixed. That it was further provided in said act that if it should appear that the United States have, when the lines and routes of said roads and branches are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the rights of 12
settlers had attached thereto, other lands of the United States nearest to the tiers of sections above specified of an amount of alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of preemption have attached as aforesaid, or the rights of settlers had otherwise attached, should be granted in lieu thereof.

Sixth. That the said act of Congress entitled as aforesaid, approved March 3rd, 1857, was subsequently amended by an act of 13
Congress entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3rd, A. D. 1865, increasing the aforesaid grant of lands to ten sections per mile, and that the said amendatory act contained the same restrictions, limitations, reservations, and exceptions contained in the said original granting act of March 3rd, A. D. 1857.

Seventh. That the said Transit Railroad Company, organized as hereinbefore alleged, was organized for the purpose of constructing 14
and undertook to construct the line of railroad hereinbefore described, from Winona via Saint Peter to a point on the Big Sioux River south of the forty-fifth parallel of latitude, and as such became entitled to the benefits of said act of March 3rd, A. D. 1857, and the acts amendatory thereof, given in aid of such railroads; and as hereinbefore alleged, the said defendant, The Winona and Saint Peter Railroad Company, became and is the successor in interest of the said Transit Railroad Company to all the benefits and provisions of said act of March 3rd, A. D. 1857, and the act amenda- 15
tory thereof, subject, however, to all of the conditions and exceptions therein, and in each of said acts contained.

6 Eighth. That said Transit Railroad Company, and the said defendant as its successor, under and by virtue of its corporate existance and franchises and rights granted to it by the Territory of Minnesota for the purpose of entitling itself to the grants and benefits conferred by the aforesaid act of Congress, did at various times and dates definitely fix portions of the line or 16

route of its road; that the line or route of the road of said defendant west of range 29, hereinafter described, and up to and including range 37, was definitely fixed on the 3rd day August, A. D. 1864, and not earlier; that the line or route of the railroad of said defendant through and upon range 38, hereinafter mentioned, was definitely fixed on the 23rd day of February, A. D. 1867, and not earlier.

Ninth. That at the time of the definite fixing of its line or route as aforesaid many of the alternate sections of land designated by
17 odd numbers for six and ten sections in width on each side of said railroad as so definitely fixed and located had been sold or otherwise disposed of by the United States, and to many of said lands the rights of preemption or entry under the homestead laws of the United States had attached, which preemption and homestead rights were and remained in full force and uncancelled prior to, on and long after the line or route of said railroad opposite to such lands had been definitely fixed, and such lands were by reason thereof excepted and reserved from the operation of the grant aforesaid;
18 that among said lands so excepted and reserved is the following, to-wit:

(1) The southwest quarter ($\frac{1}{4}$) of section one (1), township one hundred and eight (108) north, range thirty-two (32) west,
7 which was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Thomas Thompson, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota,
19 on the 24th day of May, A. D. 1864, make an entry of said tract as a homestead.

(2) The east half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) and the west half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) of section (1), township one hundred and eight (108) north, range thirty-two (32) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Elias G. Corey, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 21st day of May,
20 A. D. 1864, make an entry of said tract as a homestead.

(3) The west half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) of section one (1), township one hundred and eight (108) north, range thirty-two (32) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Walter R. Johnson, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota,
21 on the 14th day of March, A. D. 1864, make an entry of said tract as a homestead.

That the said several tracts of land hereinbefore described
8 lie within the ten-mile granted limits of the said defendant, The Winona & St. Peter Railroad Company.

(4) The northeast quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$) of section three (3), township one hundred and eight (108) north, range thirty-two (32) west, was segregated from the public lands 22
of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Silas Blackman, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 9th day of March, A. D. 1864, make an entry of said tract as a homestead.

(5) The northwest quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$) and the south half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) of section three (3), township one hundred and eight (108) north, range thirty-two (32) 23
west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Armund Christopher, who being duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 24th day of May, A. D. 1864, make an entry of said tract as a homestead.

(6) The south half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) and the east half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) of section five (5), township one hundred and eight (108) north, range thirty-two (32) west, was 24
segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Jessie Wiggin, who being duly
9 qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 24th day of June, A. D. 1864, make an entry of said tract as a homestead.

(7) The southeast quarter ($\frac{1}{4}$) of section twenty-one (21), township one hundred and nine (109) north, range thirty-two (32) west, 25
was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Charles N. Wilcox, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 10th day of November, A. D. 1863, make an entry of said tract as a homestead.

(8) The southwest quarter ($\frac{1}{4}$) of section twenty-seven (27), township one hundred and nine (109) north, range thirty-two (32) west, was segregated from the public lands of the United States by 26
an entry thereof under and pursuant to the homestead laws of the United States then in force by one Alonzo Patrick, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 21st day of May, A. D. 1864, make an entry of said tract as a homestead.

(9) The north half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) of section twenty-seven (27), township one hundred and nine (109) north, range thirty-two (32) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to 27
the homestead laws of the United States then in force by one Horace Patrick, who being then and there duly qualified to make such entry did at the United States local land office at St.
10 Peter, Minnesota, on the 21st day of May, A. D. 1864, make an entry of said tract as a homestead.

(10) The southwest quarter (¼) of section twenty-seven (27), township one hundred and nine (109) north, range thirty-two (32)
28 west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Eli G. Merrill, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 26th day of May, A. D. 1864, make an entry of said tract as a homestead.

(11) The west half (½) of the southeast quarter (¼) and the east half (½) of the southwest quarter (¼) of section thirty-five (35), township one hundred and nine (109) north, range thirty-two (32)
29 west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Daniel Price, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 21st day of May, A. D. 1864, make an entry of said tract as a homestead.

(12) The west half (½) of the northwest quarter (¼) of section thirty-five (35), township one hundred nine (109) north, range thirty-two (32) west, was segregated from the public lands of the
30 United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Alexander Harrier, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter,
11 Minnesota, on the 14th day of March, A. D. 1864, make an entry of said tract as a homestead.

(13) The southwest quarter (¼) of the southwest quarter (¼) of section thirty-five (35), township one hundred nine (109) north,
31 range thirty-two (32) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Silas Blackman, who, being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 19th day of March, A. D. 1864, make an entry of said tract as a homestead.

(14) The northeast quarter (¼) of section thirty-five (35), township one hundred and nine (109) north, range thirty-two (32) west, was segregated from the public lands of the United States by an
32 entry thereof under and pursuant to the homestead laws of the United States then in force by one Adam Wendelschafer, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 26th day of March, A. D. 1864, make an entry of said tract as a homestead.

(15) The southwest quarter (¼) of the southwest quarter (¼) of section thirty-one (31), township one hundred and nine (109) north, range thirty-two (32) west, was segregated from the public lands
33 of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one John K. Wright, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter,
12 Minnesota, on the 27th day of May, A. D. 1864, make an entry of said tract as a homestead.

(16) The southeast quarter ($\frac{1}{4}$) of section five (5), township one hundred and nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry 34
thereof under and pursuant to the homestead laws of the United States then in force by one Alfred M. Jones, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 10th day of May, A. D. 1864, make an entry of said tract as a homestead.

(17) The southeast quarter ($\frac{1}{4}$) of section three (3), township one hundred and nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United 35
States then in force by one John Smith, whose true name is unknown, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 29th day of April, A. D. 1864, make an entry of said tract as a homestead.

(18) The southwest quarter ($\frac{1}{4}$) of section three (3), township one hundred and nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Josiah C. Hemmingway, who being 36
then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 27th day of July, A. D. 1864, make an entry of said tract as a homestead.

13 (19) The northeast quarter ($\frac{1}{4}$) of section nine (9), township one hundred and nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Wm. I. Strawbridge, who, being then and there duly qualified to make such entry, did at 37
the United States local land office at St. Peter, Minnesota, on the 13th day of May, A. D. 1864, make an entry of said tract as a homestead.

(20) The northwest quarter ($\frac{1}{4}$) of section nine (9), township one hundred and nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Julius E. Williams, who, being then and there duly qualified to make such entry, did at the United 38
States local land office at St. Peter, Minnesota, on the 12th day of May, A. D. 1862, make an entry of said tract as a homestead.

(21) The west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) and the east half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section nine (9), township one hundred and nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one James Corrison, who, being then and there duly qualified to make such entry, did at the United States 39
local land office at St. Peter, Minnesota, on the 6th day of May, A. D. 1864, make an entry of said tract as a homestead.

(22) The west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section nine (9), township one hundred and nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Nathan E. Sherman, who, being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 10th day of May, A. D. 1864, make an entry of said tract as a homestead.

(23) The northeast quarter ($\frac{1}{4}$) of section eleven (11), township one hundred and nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Ferdinand Shoemaker, who, being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 14th of April, A. D. 1864, make an entry of said tract as a homestead.

(24) The northwest quarter ($\frac{1}{4}$) of section eleven (11), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Nils P. Malmborg, who, being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 14th day of April, A. D. 1864, make an entry of said tract as a homestead.

(25) The west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$), section nineteen (19), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one John E. Shaffer, who, being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 30th day of April, A. D. 1864, make an entry of said tract as a homestead.

(26) The northwest quarter ($\frac{1}{4}$) of section nineteen (19), township one hundred and nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof, under and pursuant to the homestead laws of the United States then in force, by one Austin Jacobson, who being then and there duly qualified to make such entry did, at the United States local land office at St. Peter, Minnesota, on the 11th day of July, A. D. 1864, make an entry of said tract as a homestead.

(27) The west half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) of section twenty-one (21), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof, under and pursuant to the homestead laws of the United States then in force, by one Daniel Webster, who being then and there duly qualified to make such entry did, at the United States local land office at St. Peter, Minnesota, on the 13th day of May, A. D. 1864, make an entry of said tract as a homestead.

(28) The southeast quarter (¼) of section twenty-five (25), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof, under and pursuant to the homestead laws of the United States then in force, by one Frank A. West, who being then and there duly qualified to make such entry did, at the United States local land office at St. Peter, Minnesota, on the 27th day of April, A. D. 1864, make an entry of said tract as a homestead.

(29) The southwest quarter (¼) of section twenty-five (25), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof, under and pursuant to the homestead laws of the United States then in force, by one Michael Graham, who being then and there duly qualified to make such entry did, at the United States local land office at St. Peter, Minnesota, on the 28th day of April, A. D. 1864, make an entry of said tract as a homestead.

(30) The east half (½) of the northeast quarter (¼) of section twenty-five (25), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof, under and pursuant to the homestead laws of the United States then in force, by one Hiram W. Louck, who being then and there duly qualified to make such entry did, at the United States local land office at St. Peter, Minnesota, on the 17th day of May, A. D. 1864, make an entry of said tract as a homestead.

(31) The northwest quarter (¼) of section twenty-five (25), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof, under and pursuant to the homestead laws of the United States then in force, by one Charles Perry, who being then and there duly qualified to make such entry did, at the United States local land office at St. Peter, Minnesota, on the 28th day of April, A. D. 1864, make an entry of said tract as a homestead.

(32) The northwest quarter (¼) of section twenty-nine (29), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Christian Horrig, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 11th day of May, A. D. 1864, make an entry of said tract as a homestead.

(33) The southwest quarter (¼) of section twenty-nine (29), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one W. L. Sherman, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 10th day of July, A. D. 1864, make an entry of said tract as a homestead.

(34) The northeast quarter ($\frac{1}{4}$) of section thirty-three (33), township one hundred nine (109) north, range thirty-three (33) west,
51 was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Elvin Classon, who being then and there duly qualified to make such entry, did at the United
18 States local land office at St. Peter, Minnesota, on the 8th day of June, A. D. 1864, make an entry of said tract as a homestead.

(35) The west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section thirty-three (33), township one hundred nine (109) north, range
52 thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one William Spencer, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 8th day of June, A. D. 1864, make an entry of said tract as a homestead.

(36) The northeast quarter ($\frac{1}{4}$) of section thirty-five (35), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an
53 entry thereof under and pursuant to the homestead laws of the United States then in force by one Alonzo A. Decker, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 25th day of May, A. D. 1864, make an entry of said tract as a homestead.

(37) The northwest quarter ($\frac{1}{4}$) of section thirty-five (35), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the
54 United States then in force by one Edward Casey, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 14th day of June, A. D. 1864, make an entry of said tract as a homestead.

19 (38) The west half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$), and northwest quarter ($\frac{1}{4}$) of the southeast quarter ($\frac{1}{4}$), and lot three (3) of section thirty-one (31), township one hundred nine (109) north, range thirty-three (33) west, was segregated from the
55 public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Herman Barlage, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 30th day of April, A. D. 1864, make an entry of said tract as a homestead.

(39) The west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$), and the east half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section twenty-three (23), township one hundred nine (109) north, range thirty-four (34)
56 west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one John C. Rudolph, who being then and there duly qualified to make such entry did at the United

States local land office at St. Peter, Minnesota, on the 14th day of April, A. D. 1864, make an entry of said tract as a homestead.

(40) The northeast quarter (¼) of section twenty-one (21), township one hundred nine (109) north, range thirty-five (35) west, was segregated from the public lands of the United States by an entry 57
thereof under and pursuant to the homestead laws of the United States then in force by one Charles Miller, who being then and there duly qualified to make such entry did at the United
20 States local land office at St. Peter, Minnesota, on the 4th day of July, A. D. 1864, make an entry of said tract as a homestead.

(41) The southeast quarter (¼) of section twenty-one (21), township one hundred nine (109) north, range thirty-five (35) west, was segregated from the public lands of the United States by an entry 58
thereof under and pursuant to the homestead laws of the United States then in force by one Michael Blaeser, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 4th day of July, A. D. 1864, make an entry of said tract as a homestead.

(42) The southeast quarter (¼) of section five (5), township one hundred eight (108) north, range thirty-five (35) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United 59
States then in force by one Peter H. McDermid, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 27th day of February, A. D 1864, make an entry of said tract as a homestead.

(43) The southeast quarter (¼) of section twenty-one (21), township one hundred nine (109) north, range thirty-six (36) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United 60
States then in force by one Julius F. Kirschtein, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 7th day of March, A. D. 1864, make an entry of said tract as a homestead.

21 (44) The northeast quarter (¼) of section twenty-seven (27), township one hundred nine (109) north, range thirty-six (36) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one John Doster, who 61
being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 7th day of March, A. D. 1864, make an entry of said tract as a homestead.

(45) The northwest quarter (¼) of section twenty-seven (27), township one hundred nine (109) north, range thirty-six (36) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Lorenzo Ammann, who being then and there duly qualified to make such entry, did at the United 62

States local land office at St. Peter, Minnesota, on the 7th day of March, A. D. 1864, make an entry of said tract as a homestead.

(46) The southeast quarter (¼) of section twenty-seven (27), township one hundred nine (109) north, range thirty-six (36) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one John Stamm, who being then and there duly qualified to make such entry did at the United
63 States local land office at St. Peter, Minnesota, on the 7th day of March, A. D. 1864, make an entry of said tract as a homestead.

(47) The southwest quarter (¼) of section twenty-seven
22 (27), township one hundred nine (109) north, range thirty-six (36) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one John Victor, who being then and there duly qualified to make such entry did at the
64 United States local land office at St. Peter, Minnesota, on the 7th day of March, A. D. 1864, make an entry of said tract as a homestead.

(48) The northeast quarter (¼) of section twenty-nine (29), township one hundred nine (109) north, range thirty-six (36) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one August Quense, who being then and there duly qualified to make such entry did at the United
65 States local land office at St. Peter, Minnesota, on the 8th day of March, A. D. 1864, make an entry of said tract as a homestead.

(49) The northwest quarter (¼) of section thirty-five (35), township one hundred nine (109) north, range thirty-six (36) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Richard Fischer, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 7th day of March,
66 A. D. 1864, make an entry of said tract as a homestead.

(50) The southwest quarter (¼) of section thirty-five (35), township one hundred nine (109) north, range thirty-six (36) west, was segregated from the public lands of the United States by an
23 entry thereof under and pursuant to the homestead laws of the United States then in force by one Jacob F. Barbier, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 7th day of March, A. D. 1864, make an entry of said tract as a
67 homestead.

(51) The northeast quarter (¼) of section twenty-five (25), township one hundred eight (108) north, range thirty-eight (38) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Joseph Berg, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 23rd day of April, A. D. 1864, make an entry of said tract as a homestead.

(52) The south half (½) of the northeast quarter (¼) and the south half (½) of the northwest quarter (¼) of section (5), township one hundred eight (108) north, range thirty-three (33) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Charles Helman, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 3rd day of May, A. D. 1864, make an entry of said tract as a homestead. 68

(53) The west half (½) of the southeast quarter (¼) of section twenty-five (25), township one hundred eight (108) north, range thirty-eight (38) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the homestead laws of the United States then in force by one Charles Fiek, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 18th day of June, A. D. 1861, make an entry of said tract as a homestead. 69

24

(54) The southwest quarter (¼) of section twenty-nine (29), township one hundred ten (110) north, range twenty-seven (27) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the preemption laws of the United States then in force by one Timothy T. White, who being then and there duly qualified to make such entry did at the United States local land office at St. Peter, Minnesota, on the 26th day of March, A. D. 1857, make an entry of said tract as a preemption claim under said preemption laws, alleging settlement thereon March 1, 1857. 70

(55) The northwest quarter (¼) of section twenty-nine (29), township one hundred ten (110) north, range twenty-seven (27) west, was segregated from the public lands of the United States by an entry thereof under and pursuant to the preemption laws of the United States then in force by one Matthew Ewing, who being then and there duly qualified to make such entry, did at the United States local land office at St. Peter, Minnesota, on the 27th day of July, A. D. 1857, make an entry of said tract as a preemption claim under said preemption laws, alleging settlement thereon June 9th, A. D. 1857. 71 72

That each and all of the foregoing tracts of land, except those hereinbefore stated to lie within the ten-mile granted limits of said defendant, lie on or within the six-mile granted limits of the said defendant, The Winona & St. Peter Railroad Company.

25

That each and all of said tracts of land were at the times they were entered as homesteads or preempted as aforesaid part of the public domain of the United States and subject to homestead and preemption entry. 73

That the homesteaders and preemptors hereinbefore described in making their several entries of said tracts of land duly complied with all the requirements of the laws then in force governing such matters in making such entries, paid fees as required by law to be

paid therefor, and their said entries were accepted and approved at the time they were made as hereinbefore set out by the proper land officers of the United States in charge of the offices hereinbefore mentioned.

Tenth. That said entries were and remained in full force and
74 existence at the time of and until long after the line or route of the said railroad was definitely fixed in, through or opposite to the said several tracts of land and the sections in which they are situated.

Eleventh. That notwithstanding the fact that the homestead and preemption rights aforesaid had attached to said lands prior to the time when the line or route of said road was definitely fixed in, through or opposite to the same; and notwithstanding the fact that they were in full force and effect at the said time and long
75 thereafter by reason of which said tracts of land were excepted and reserved from the operation of said grant, the ministerial officers of your orator disregarding the provisions of said act and the amendments thereto did erroneously and improperly and without
26 authority of law so to do, certify said tracts of land to the State of Minnesota which had succeeded to the rights and was charged with all the duties of the Territory of Minnesota under said acts and the acts amendatory thereof for the benefit of said
76 defendant, The Winona and Saint Peter Railroad Company as the successor in interest of said Transit Railroad Company.

That the said State of Minnesota thereafter by various legislative and other acts conveyed all its right, title, and interest in and to said tracts of land to the said defendant, The Winona and Saint Peter Railroad Company.

Twelfth. That thereafter and on the third day of March, 1887, the Congress of the United States passed an act entitled as follows: "An act to provide for the adjustment of land grants made by Con-
77 gress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," which said act contained the following provisions:

SEC. 1. That the Secretary of the Interior be and is hereby authorized and directed to immediately adjust in accordance with the decisions of the Supreme Court each of the railroad grants made by Congress to aid in the construction of railroads and heretofore unadjusted.

SEC. 2. That if it shall appear upon the completion of such
78 adjustments, respectively, or sooner, that lands have been, from any cause, heretofore erroneously certified or patented by the United States for the use or benefit of any company claiming by, through, or under grant from the United States, to aid in the con-
27 struction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so reconvey such lands to the United
79 States within ninety days after the aforesaid demand shall have been made it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary pro-

ceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States.

Thirteenth. That said tracts of land hereinbefore described were erroneously and without authority of law certified to the State of Minnesota to aid in the construction of said line of railroad as aforesaid, and the homestead and preemption rights of the persons hereinbefore named had attached to the same before and remained 80
attached thereto at the time and after the line or route of said railroad was definitely fixed, as hereinbefore more particularly set forth. That the said lands had been segregated from the public domain of the United States by such homestead and preemption entries prior to the time when the line of route of said road had been definitely fixed opposite thereto.

Fourteenth. That at and prior to the seventeenth day of January, 1890, the said grant in aid of said railroad was unadjusted and all of said land hereinbefore described having been erroneously certified or patented by the United States to said State of Minne- 81
sota for the benefit of the said defendant railroad company, and on
the said seventeenth day of January, 1890, it duly appear-
28 ing that the grant in aid of said road was unadjusted and the
land described hereinbefore had been erroneously certified by the officers of the United States to the State of Minnesota for the use and benefit of said company through and under grant of the United States to aid in the construction of said railroad, demand was duly made January 17th, 1890, by the Secretary of the Inte- 82
rior upon said railroad company for the relinquishment and reconveyance to the United States of all of said lands hereinbefore described.

Fifteenth. That more than ninety days have elapsed since demand was made, and the said railroad company refused and still refuses to reconvey to the said United States said lands hereinbefore described.

Sixteenth. That the said defendants, The Winona & St. Peter Railroad Company, The Winona & St. Peter Land Company, The Minnesota Land and Investment Company, corporations duly organized and incorporated under the laws of the State of Minne- 83
sota and transacting business within the said State (here follows names of all defendants as they appear on pages 1 and 2), each claim to have an interest in or lien upon one or more of the said several tracts of land hereinbefore described and are made parties hereto to answer to that interest if any they have.

And may it please your honors to grant unto your orator a writ of subpœna, issuing out of and under the seal of this honorable court, directed to the defendants, The Winona & Saint Peter Rail- 84
road Company, The Winona & Saint Peter Land Company, The Minnesota Land and Investment Company, corporations duly
organized and incorporated under the laws of the State of
29 Minnesota and transacting business within the said State
(here follows names of all defendants as they appear on pages one and two), commanding them and each of them at a certain day and under a certain penalty therein to be specified, per-

sonally to be and appear before your honors in this honorable court and then and there answer (not under oath, the answer under oath
85 being hereby expressly waived) all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet, and your orators will ever pray.

Wherefore your orator prays for a decree herein against the defendants that the land hereinbefore described be restored to your orator; that the certification thereof to the State of Minnesota, the conveyance thereof by the said State of Minnesota to said defendant, The Winona and Saint Peter Railroad Company, and the
86 conveyance of the said railroad company to said defendant, The Winona and Saint Peter Land Company, and each and all of the conveyances to any of the defendants herein of any of said tracts of land be set aside and cancelled, and for such other and further relief as may be just.

CHARLES H. ALDRICH,
Acting Attorney-General,
EUGENE G. HAY,
United States District Attorney for Minnesota,
Solicitors for Complainants.

87 ROBERT G. EVANS,
Special Assistant U. S. Attorney, of Counsel.

88 30 [Title of cause.]

The answer of the Winona & St. Peter Railroad Company.

Defendant, The Winona & St. Peter Railroad Company, for answer to the second amended bill of complaint in the above-entitled suit, saith:

1. That it admits and avers that it is one of the railroad corporations of the State of Minnesota, and that, in addition to the other powers, rights, privileges, immunities, and franchises conferred upon it by the laws of the State of Minnesota, it in the
89 year 1862 succeeded to and has since had all the rights, powers, privileges, immunities, property, and franchises conferred on or possessed by the "Transit Railroad Company." And that the said "Transit Railroad Company" was, as alleged in the bill of complaint herein, a corporation created by and existing under the laws of the Territory and State of Minnesota, having all the rights, power, property, and franchises alleged.

And that by section 1 of the act of Congress of March 3, 1857, referred to in the bill of complaint, the United States granted to
90 the Territory of Minnesota to aid in the building of the following lines of railroad, viz: (1) "From St. Paul and from St. Anthony via Minneapolis to a convenient point of junction west of the Mississippi to the southern boundary of the Territory in the
31 direction of the mouth of the Big Sioux River" (such line is hereinafter styled The St. Paul & Sioux City Railroad), and (2) "From Winona via St. Peter to a point on the Big Sioux River south of the forty-fifth parallel of north latitude"—"every alternate section of land designated by odd numbers for six sec-

tions in width on each side of each of the said roads." And it was in and by said section of said act provided: "But in case it 91
shall appear that the United States have, when the lines of routes of said roads and branches are definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or that the right of preemption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of the said Territory or future State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate 92
sections or parts of sections as shall be equal to such lands as the United States has sold or otherwise appropriated, or to which the rights of preemption have attached as aforesaid * * * provided, that the land to be so located shall in no case be farther than fifteen miles from the lines of said roads or branches, and selected for and on account of each of said roads or branches."

And it was by section 3 of said act provided: "That the said lands hereby granted to the said Territory or future State shall be subject to the future disposal of the legislature thereof for the 93
purpose herein expressed, and no other; and the said railroads and branches shall be in the main public highways for the use
32 of the Government of the United States free of toll or other charge, upon the transportation of any property or troops of the United States.

2. That by the act of Congress of March 3, 1865, referred to in the bill of complaint herein, the quantity of lands so granted by said act of 1857 was increased to ten sections per mile for each of said railroads. And by sections 2, 4, and 5, and of said act of 94
March 3rd, A. D. 1865, it was provided as follows: (Section 2.) "That the first proviso in the first section of the act aforesaid (of March 3rd, 1857,) shall be so amended as to read as follows—

Provided, that the land to be so located shall in no case be farther than twenty miles from the line of said roads and branches to aid in the construction of each of which said grant is made, and said lands granted shall in all cases be indicated by the Secretary of the Interior." * * * (Section 4.) "That the sections and 95
parts of sections of land, which by said acts and this grant shall remain to the United States within ten miles on each side of said roads and branches, shall not be sold for less than double the minimum price of public lands when sold." (Section 5.) "That the lands hereby granted shall be subject to the disposal of the legislature of the State of Minnesota for the purposes aforesaid, and no other. And the said railroads and branches shall be in the main public highways for the use of the Government of the United States, free of all toll or other charges, upon the transportation of 96
any property or troops of the United States." And by section 7 of an act of Congress approved May 12th, A. D. 1864, entitled "An act for a grant of lands to the State of Iowa, in alternate
33 sections, to aid in the construction of a railroad in said State," there were granted to the State of Minnesota for the purpose of aiding in the construction of the said St. Paul & Sioux

City Railroad four additional alternate sections of land per mile, to be selected within twenty miles of the line of road, upon the
97 same conditions, restrictions, and limitations as are contained in the said act of March 3rd, A. D. 1857, which grant was accepted by the State of Minnesota, and the right so conferred and the land so granted were by the State granted to the said St. Paul & Sioux City Railroad Company.

3. That the said Transit Railroad Company, definitely located and fixed its line from Winona, its eastern terminus, westwardly via St. Peter to the west line of range 31, in the year 1857–58. And this defendant staked out and definitely located, fixed, and marked on the face of the earth its line from the west line of range
98 31, westwardly to the west line of range 37, on and before April 9th, A. D. 1864, and from the west line of range 37, westwardly through range 38, on and before the first day of November, A. D. 1866. And it filed in the office of the Secretary of the Interior the map of its said definite location between ranges 32 and 37 inclusive, on the 28th day of April, A. D. 1864, and the map of its definite location through range 38 on and prior to November 3rd, A. D. 1866. And the said St. Paul & Sioux City Railroad Com-
99 pany definitely located and fixed its line of railroad from St. Paul southwesterly to range 40 in and before the year 1859.

4. That by section 2 of an act of the legislature of the Territory of Minnesota, approved May 22nd, A. D. 1857, entitled "An act to execute the trust created by an act of Congress,
34 entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the
100 construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named," there were granted to and vested in the said Transit Railroad Company, all the interest and estate present and prospective of the said Territory and future State in or to any and all the lands granted by the United States to said Territory by said act of Congress of March 3rd, A. D. 1857, together with all and singular the rights, privileges and immunities conferred or intended to be conferred by said act, in aid of the said line of road, from Winona, via St. Peter to the Big Sioux River. And by an act of the legislature of the State of
101 Minnesota, approved March 10th, A. D., 1862, entitled "An act to facilitate the construction of a railroad from Winona westerly by way of St. Peter" this defendant on complying with the conditions upon which the grant was made, became entitled to receive from the governor of the State of Minnesota, acting for or in the name of the State, a deed in fee simple of all the lands granted to aid in the building of its said line. And, by an act of the legislature of the State of Minnesota, approved March 2nd, A. D. 1875, entitled "An act to dispose of the lands granted or to
102 be granted by the United States, subsequent to March 3rd, A. D. one thousand, eight hundred and fifty-seven, to aid in the

construction of a railroad from Winona westwardly by way of St. Peter, to a point on the Big Sioux River, south of the forty-
35 fifth parallel of north latitude," it was provided and enacted that any and all additional grants of land made by the United States subsequent to the 3rd day of March, A. D. 1857, or which might be made to the State of Minnesota for the purpose of aiding in the building of said line from Winona westwardly via St. Peter to the Big Sioux River, should enure to the benefit of 103
this defendant, and also that "the said lands (granted as aforesaid to aid said line) and the present and future interest of this State in and to them, are hereby granted and assigned unto the said railroad company, and the title of all said lands heretofore or hereafter granted by the United States to the State of Minnesota for the purposes aforesaid, shall vest in said railroad company at the time and upon the terms described by the said act of Congress, making the grant; and it shall be the duty of the governor of this State, acting in the name of and for the State, to convey to said railroad 104
company, its successors or assigns, by deed or deeds in fee simple, the lands so granted."

5. That by chapter two of an act of the legislature of Minnesota, approved March 4th, 1864, entitled "An act to facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto, the said St. Paul & Sioux City Railroad Company was authorized and empowered (by the name of the Minnesota Valley Railroad Company) to construct, equip, and operate the said line of railroad from St. Paul and from 105
St. Anthony via Minneapolis to a point of junction west of the Mississippi to the southern boundary of the State, in the direction of the mouth of the Big Sioux River—and made the bene-
36 ficiary of the grant by the said act of Congress of March 3rd, A. D. 1857, so far as it related to that line of road.

And by the same act, the governor of the State was authorized and directed on the performance by the said St. Paul & Sioux City Railroad Company, of the conditions on which said grant was made, 106
to convey the same to it in the name of the State in fee simple, all the land appertaining to said line.

6. That this defendant and the said St. Paul & Sioux City Railroad Company, each, within the times and in the manner specified and required by the laws of the United States, and the State of Minnesota, built, equipped, and put into operation its said line of road, and became entitled to all the lands granted in aid of such lines.

7. That annexed hereto, and made a part of this answer and 107
marked Exhibit "A," is a list of the lands in the bill of complaint herein described. And said Exhibit "A" shows the dates that each tract was certified to the State and the company for which it was so certified.

And all of the tracts or parcels in said Exhibit "A" inclosed in brackets were conveyed by this defendant to the "Winona & St. Peter Land Company," in pursuance of the judgment and decree of the Supreme Court of the United States, as hereinafter alleged. 108

And all of said lands in the bill of complaint described, lie within the six miles limits of this defendant, except those in section 1, town 108, range 32, which lie in its ten mile limits; and all the said lands in said Exhibit "A" lie outside of the place limits
37 and within the indemnity limits of the said St. Paul & Sioux City Railroad Company.

8. That before the said St. Paul & Sioux City Railroad Company had definitely located or fixed its said line past, or opposite, the lands in question, the United States had sold, and the right of
109 preemption had attached to so many of the alternate odd-numbered sections within the six mile place limits of its grant, and that the whole of the lands (including the lands in question in this suit), in the odd-numbered sections within the indemnity limits of said grant, then undisposed of, or to which the right of preemption had not attached, were insufficient to fill it.

And after the making of the alleged homestead and preemption filings and entries on the several tracts and subdivisions of the said lands in the bill of complaint described, the Secretary of the Inte-
110 rior, upon due and legal investigation and hearing, before the certification of the said lands to the State as aforesaid, held and adjudged such filings fraudulent, void, and inoperative, and cancelled and set the same aside. And after said filings had been so cancelled and set aside, and before the lands were certified to the State as aforesaid, the said St. Paul & Sioux City Railroad Company selected the lands so certified to it as aforesaid as indemnity for the lands lost from its grant, within its place or granted limits, as aforesaid.

111 And the said St. Paul & Sioux City Railroad Company was legally and equitably entitled to, and the owner of, the said tracts and parcels, certified to the State for it as aforesaid and to all the lands in the bill of complaint described, east of range 38,
38 except the southeast quarter of section 5, township 109, range 35, and the southeast quarter of section 21, in town 109, range 36, under the grants to it and in aid of its line, unless this defendant had a prior and paramount right thereto, under the said grants to it, and in aid of its line.

112 9. That before March 3rd, 1857, and up until the year 1879, it was uniformly held and ruled by the Secretary of the Interior and the other officers of the land department of the United States, and by the Governor and other executive officers, and the courts of the State of Minnesota:

(1) That the line of a railroad became and was definitely fixed so as to attach the grant to the odd-numbered sections within the granted limits, as against any homestead or preemption filing or entry thereafter initiated, as soon as and when it was surveyed, staked out and marked on the face of the earth; and

113 (2) That whenever on any subdivision of an odd-numbered section within the granted or place limits, at the date of the definite location of the road, there was a valid preemption or homestead filing or entry, which was afterwards set aside and cancelled, before

the adjustment of the grant, such subdivision thereupon enured to the grant; and

(3) That when such a filing or entry was fraudulent or invalid, it did not operate to take the land out of the grant; and

(4) That the grant attached to the lands in the indemnity limits, 114
necessary to fill the grant, at the same time that it attached to the lands in the place limits, irrespective of the date or fact of selection; and

(5) That when the lands lay within the common limits
39 of the two cotemporaneous grants, each grant was entitled to an undivided moiety of the lands enuring to the grants in such common limits. And in pursuance of and in accordance with the aforesaid rules, the grants to or for each and all of the said land-grant railroad companies in the State of Minnesota were adjusted and administered. 115

And prior to the year 1879 no court of the United States or of any State had, as this defendant alleges and believes, questioned the correctness of any said rules.

And relying on the correctness of said rules, the lands granted to the Territory or State of Minnesota in aid of railroads were certified to the State for the several lines of road that were respectively beneficiaries of such grants, and conveyed by the State to the respective companies owning said several lines of road, and sold and conveyed by said railroad companies, respectively, to pur- 116
chasers who settled on and improved them.

That each and all of said rules were promulgated and enforced by the Secretary of the Interior and other officers of the United States whose duty it was to adjust and administer such grants. And the lands enuring to the said grants in accordance with those rules, including the lands in question in this suit, were by said officers charged to the several grants respectively and deducted from the quantity of lands which the said land grant companies, including this defendant, were entitled to receive under their respective 117
grants. And, according to the Statutes of the United States and the settled rules of the Interior Department of the United States,

if the homestead and preemption entries and filings in the
40 bill of complaint herein alleged to have been made on the lands in question had been allowed and sustained, or if it had been held that they excepted the lands on which they were made from the grant, this defendant would have had the right to select in lieu thereof an equal quantity of lands within the limits 118
of its grant as an indemnity for those lost by or on account of such entries or filings.

And when the lands in question were certified to the State as enuring to said grant there were within the limits of the defendant's grant, subject to be selected for such indemnity, a sufficient quantity of lands to make up for those lost by such entries or filings. That by the disallowance of such entries and filings and by the certifying and charging of those lands to this defendant and by the other rulings of the Secretary of the Interior the United States denied such right of selection; and all the lands which this

119 defendant could then have so selected have since been disposed of by the United States; and the United States charged to the company receiving said land and collected from it the fees of the register and receiver of the local land offices before the lands in question were certified to the State.

And the United States, if it should now reverse the rulings heretofore made as aforesaid, would take advantage of its own wrong and unjustly deprive this defendant of its legal and equitable rights without any fault or negligence on the part of this defendant.

120 That said rules, in accordance with which this defendant's grant was adjusted, long since became rules of property that can not now be disregarded or departed from without great injustice and irreparable injury to this defendant and other land grant railroad
41 companies in this State and their grantees and successors in interest.

That to depart from these rules now would unsettle and invalidate the title to many hundreds of thousands of acres of land long since
121 purchased by those who settled upon and improved the same, relying and having a right to rely on the then unbroken line of rulings and decisions of the Land Department of the United States, and of this and other States, and of the courts of this and other States.

And had the officers of the United States then held and decided that such filings or entries in law operated to except the lands, so filed on or entered, from this defendant's grant, the said St. Paul & Sioux City Company would have had the right to, as it in fact did, select the same, in lieu of lands lost as aforesaid within its granted
122 limits.

And this defendant denies that the United States lost any lands by its aforesaid rulings, or that any of these lands could revert to the United States if the certificates or patents therefor were set aside.

10. That the governor of the State of Minnesota, being about to convey to the said St. Paul & Sioux City Railroad Company, said lands certified to the State for it as aforesaid, as lands enuring to it under the said grants in aid of its line of road—this defendant claiming the same as enuring and belonging to it under the said
123 grants to it and in aid of its line, in the year 1875 commenced a suit in the district court of Watonwan County, in the State of Minnesota, against the said St. Paul & Sioux City Railroad Company and others, in which suit this defendant (plaintiff therein)
42 claimed and prayed judgment and decree that it was, and that the said St. Paul & Sioux City Railroad Company was not the owner of, or entitled to the said lands, but that the rights and claim of the said St. Paul & Sioux City Railroad Company thereto
124 were inferior and subordinate to the claim and rights of this defendant under the said grants to it and in aid of its line, and that the said lands enured and belonged to this defendant under its grant.

And this defendant further prayed that the said St. Paul & Sioux City Railroad Company might be enjoined and restrained from applying to the governor for, and from accepting and receiving from him, a deed of any of said lands. And the said St. Paul &

Sioux City Railroad Company appeared in and defended said suit, and such proceedings were had therein that judgment was duly 125
rendered in February, 1879, in accordance with the said prayer of the plaintiff.

And the said St. Paul & Sioux City Railroad Company having appealed to the supreme court of the State of Minnesota, from the said judgment, it was by that court in all things affirmed in August, A. D. 1880; and the said St. Paul & Sioux City Railroad Company having appealed from that judgment to the Supreme Court of the United States, that court at the October term thereof, in 1884, affirmed the said judgment. And in pursuance of the said judgment of the supreme court of Minnesota, the governor of the State 126
of Minnesota, for and in the name of the State, in 1880, conveyed said lands in said suit described, to this defendant. And the governor of the State of Minnesota, for and in the name of the
43 State by deed conveyed to this defendant in or before 1874 all the other lands described in the bill of complaint herein.

11. That this defendant, as party of the second part, entered into an agreement in October, A. D. 1867, with Danforth N. Barney, Jesse Hoyt, and others, as parties of the first part, for a valu- 127
able consideration, to convey to said parties of the first part, or to such person or persons as a majority of them might direct, "as many acres of land heretofore granted by Congress to the State of Minnesota as the said party of the second part shall receive from the said State by reason of the construction of one hundred and five miles thereof, extending westwardly from Winona."

The lands to be conveyed as aforesaid were to be selected as follows:

"Beginning at Winona and from there proceeding on each side of said railroad on a course running parallel therewith and embrac- 128
ing each of the six, ten, fifteen, and twenty miles limits, * * * and taking all the lands within each and all of said limits, until as many acres shall have been taken and selected as the said company shall have received for the construction of the portion of said railroad now completed, estimated at 105 miles."

And this defendant, under said contract, conveyed to the parties designated and directed by said Barney and his associates prior to July, 1878, all the lands described in the bill of complaint herein, 129
except those in range 38 and those which it conveyed to the Winona & St. Peter Land Company in pursuance of the judgment of the Supreme Court of the United States, as hereinbefore set
44 forth, and those to whom it so conveyed immediately settled upon said lands and have ever since lived upon and improved the same.

That in July, A. D. 1878, the said Barney and his associates commenced an action in the district court of the State of Minne- 130
sota for the county of Blue Earth against this defendant, to compel it to convey to them under the contract aforesaid, all those in parenthesis in Exhibit "A" hereto.

And said suit having been removed into the United States circuit court for the district of Minnesota, it was in April, 1881,

decided and adjudged by this court that this defendant had earned and was entitled, under said grants in aid of the building of its line of road, to the said several tracts and parcels so sued for, and that it should, under the contract aforesaid, convey the same to the said Barney and his associates, or to such person or persons as they
131 might indicate; which said decree was affirmed by the Supreme Court of the United States on appeal in March, A. D. 1886.

And in obedience to such decree, and to the direction of said Barney and his associates, this defendant did convey said several tracts in fee simple absolute to the Winona & St. Peter Land Company, on the 28th day of November, A. D. 1887.

12. That long before the year 1873 this defendant built its rail-
132 road past all of the lands in question and across and over some of them, and made its stations and built its depot buildings upon some of them. And as soon as it was decided as aforesaid that said lands enured to it under its said grant, it, relying upon such
45 decision, publicly and at great expense, advertised for sale and sold the same; and in the courts it has defended its title to certain tracts of said land against adverse claims made thereto under the homestead and preemption laws of the United States. And in every such suit the courts have held its title to be valid;
133 and its grantees and the purchasers from them have, for more than fifteen years before this suit was brought, lived upon and improved very many tracts of said lands; yet not until long after all the transactions and doings aforesaid, nor until long after this defendant had conveyed in fee simple absolute all the lands in the bill of complaint herein described, did the United States or any officer thereof question the right of this defendant to any part or parcel of said lands, or the validity of its title or of the title of its grantees or successors in interest thereto. And long prior to the
134 commencement of this suit this defendant had sold, and for a valuable consideration conveyed, all the lands except the west half of northeast quarter of section 25, township 108, range 38, in the bill of complaint described, which lie in range 38, viz: The east half of northeast quarter of section 25, township 108, range 38, to E. M. Anderson, March 24th, A. D. 1886; and the west half of southeast quarter of section 25, township 108, range 38, to George B. Walker, February 16th, A. D. 1887.

And this defendant has not now, nor has it since it conveyed said
135 lands in the bill of complaint described as aforesaid, any title or claim to or estate or interest in, or possession or control of any of them. And this defendant conveyed many tracts and parcels of said lands by and with full covenants of warranty.

46 13. That this defendant has no knowledge or information as to whether any of these persons alleged in the bill of complaint herein to have been duly qualified to make a preemption or homestead entry, and to have made such entries of certain parcels
136 or tracts of said lands, were so qualified or made such entries, and it denies that either or any of them was qualified to make or did make such entry. And it avers and alleges that all such pretended filings or entries as were made by any or either of said persons were

by the Secretary of the Interior, after due notice, hearing, and investigation, legally held and adjudged to be, and in fact were, fraudulent and void. And this defendant further avers that none of those who pretended to file upon or enter, or who it is alleged filed upon or entered any tract or parcel of said lands, ever settled upon the lands upon which it is alleged he so filed and made a homestead 137
or preemption entry.

And this defendant has neither knowledge nor information sufficient to enable it to state whether, or at what time, any of such pretended filings or entries were made, and it avers that when its line of road was definitely located and fixed opposite and past said lands the United States had not sold or otherwise appropriated or disposed of, nor had the right of preemption attached to, any tract or parcel thereof, nor was any tract or parcel thereof thus or otherwise excepted from the operation of the defendant's said grant or 138
erroneously certified to the State.

14. That at and prior to January, 1890, and for many years prior to the passage of said act of March 3rd, 1887, the grant of
47 lands in aid of this defendant's line of road had been adjusted from its eastern terminus at Winona westwardly to a point far west of any of the lands in question in this suit, and practically throughout its entire length.

15. That the Secretary of the Interior has not demanded from the 139
said St. Paul & Sioux City Railroad Company a relinquishment or reconveyance to the United States of any of said lands.

16. That if the conveyance by the United States to the State, and by the State to this defendant, were set aside or cancelled, the United States would have no real or substantial interest in any of said lands, nor more than the formal title; but the whole beneficial interest in them would, under the act of Congress of March 3rd, 1887, enure and belong to the persons in possession thereof and entitled thereto under said act. And this suit is brought for the benefit of and in 140
the interest of those persons.

17. That not only have all said lands, except the west half of southeast quarter and east half of southwest quarter of section 35, township 109, range 32 west, and the west half of northeast quarter of section 25, township 109, range 38 west, been sold and conveyed to other parties, who relied on the validity of the title thereof as aforesaid, but those persons have in many instances mortgaged the same as security for money borrowed thereon. And each and every of said purchasers and grantees purchased and took conveyances of 141
the several tracts conveyed to them respectively, and paid them for the full value thereof, without any notice or knowledge of
48 any infirmity in the title, and believing that the title thereto was valid and unimpeachable, and none of them had any notice or knowledge that the title to any tract or parcel of the said lands in the bill of complaint herein described was questioned or questionable until about the time this suit was begun. 142

18. That this defendant admits the passage of said act of Congress of March 3rd, 1887, referred to in the bill of complaint, and that demand was made by the Secretary of the Interior upon this

defendant at or about the date alleged for the relinquishment and reconveyance of the lands in question, except the west half of section 29, township 110, range 27, and that this defendant has not relinquished or reconveyed them.

And this defendant will beg leave more particularly and fully to
143 refer at the hearing herein to the said last-cited act, and to each and every other act of Congress in this answer referred to. And, except as hereinbefore admitted, this defendant denies each and every allegation of the bill of complaint.

SEC. 19. And this defendant further alleges and insists that the United States as complainants can not and should not maintain this suit, or obtain the relief prayed for, or any relief in the premises, or question the title of this defendant or those claiming under it, because of the matters and facts above alleged, and because of their
144 laches in bringing this suit, and the acquiescence in the open, notorious, and long-continued possession and claim of title of this defendant and those claiming under it, while they have been making
49 valuable improvements upon said lands, relying upon the validity of their title, and because the title to said lands has long since passed to and is now held by bona fide purchasers for a valuable consideration, who took and hold the same without any notice or knowledge of any infirmity in the title, and who have ever since their purchase continued to live upon and improve the
145 same, believing that the title thereto was valid and unimpeachable, and because this suit is, as to all those in whose interest and for whose benefit it is brought, barred by the statute of limitations, as well as by the laches in bringing the suit, and by their acquiescence as aforesaid.

And because the officers of the United States, whose duty it was to construe, adjust, and administer such grants, certified to the State the lands in question as enuring to the State under the grant,
146 and charged them to this defendant's grant, and required this defendant to pay the fees of the register and receiver before the certification thereof, and refused to permit it to select lands in lieu of them as it might then have done; and because this defendant was clearly entitled to either the lands in question or an equal quantity of other lands in lieu thereof, and if the complainants succeed in this suit, this defendant, without either fault or negligence on its part, would, by the acts of the officers of the United States, authorized to act for the United States in the premises, be deprived of both,
147 and because the rules in pursuance of which these lands were certified to the State, and held to enure to the grant, long since became rules of property, the disregard of which now would be a fraud upon and work irreparable injury to the beneficiaries of
50 such grants in this State, including this defendant, and to their grantees and successors in interest. And this defendant further insists that the act of Congress of March 3rd, 1887, referred to, is inapplicable to the grant of this defendant, and espe-
148 cially to that part of it within which the lands in question lie, that was many years ago adjusted in accordance with the rules then and theretofore unquestioned.

Wherefore this defendant prays that it may be hence dismissed with its reasonable costs and charges in this behalf wrongfully sustained.

THOMAS WILSON,
LLOYD W. BOWERS,
Solicitors of the Defendant, the Winona & St. Peter R. R. Co.

THOMAS WILSON, *of Counsel.*
THE WINONA & ST. PETER R. R. CO.,
By MARVIN HUGHITT, *President.* 149

Attest:
[Corporate seal.] J. B. REDFIELD, *Secretary.*

Verified by Marvin Hughitt.

By stipulation of parties the foregoing answer of the Winona & St. Peter Railroad Company is also to stand and be taken as the answer of the Minnesota Land and Investment Company. 150

51 EXHIBIT A.

Description.	Date of certification.	For what company.
SW. ¼ sec. 1–108–32	Feb. 28, 1872	Und. ½ to each Co.
E. ½ NW. ¼ and W. ½ NE. ¼ sec. 1–108–32	Feb. 28, 1872	Und. ½ to each Co. 151
W. ½ NW. ¼ sec. 1–108–32	Feb. 28, 1872	Und. ½ to each Co.
(NE. ¼ NE. ¼ sec. 3–108–32)	May 14, 1874	St. P. & S. C. R. R. Co.
(NW. ¼ NE. ¼ and S. ½ NE. ¼ sec. 3–108–32)	May 14, 1874	St. P. & S. C. R. R. Co.
(S. ½ NE. ¼ and E. ½ NW. ¼ sec. 5–108–32)	May 14, 1874	St. P. & S. C. R. R. Co.
(SE. ¼ sec. 21–109–32)	May 14, 1874	St. P. & S. C. R. R. Co.
(SW. ¼ NW. ¼ sec. 27–109–32)	May 14, 1874	St. P. & S. C. R. R. Co.
(N. ½ NW. ¼ sec. 27–109–32)	May 14, 1874	St. P. & S. C. R. R. Co. 152
(SW. ¼ sec. 27–109–32)	May 14, 1874	St. P. & S. C. R. R. Co.
W. ½ SE. ¼ and E. ½ SW. ¼ sec. 35–109–32	Oct. 24, 1873	W. & St. P. R. R. Co.
(W. ½ N. W. ¼ sec. 35–109–32)	May 14, 1874	St. P. & S. C. R. R. Co.
(SW. ¼ SW. ¼ sec. 35–109–32)	May 14, 1874	St. P. & S. C. R. R. Co.
(NE. ¼ sec. 35–109–32)	May 14, 1874	St. P. & S. C. R. R. Co.
SW. ¼ of SW. ¼ (SW. ¼ sec. 31–109–32)	May 14, 1874	St. P. & S. C. R. R. Co. 153
SE. ¼ sec. 5–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
SE. ¼ sec. 3–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
SW. ¼ sec. 3–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
NE. ¼ sec. 9–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
NW. ¼ sec. 9–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
W. ½ SE. ¼ and E. ½ SW. ¼ sec. 9–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
52 W. ½ SW. ¼ sec. 9–109–33	Nov. 24, 1873	W. & St. P. R. R. Co. 154
NE. ¼ sec. 11–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
NW. ¼ sec. 11–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
(NW. ¼ SE. ¼ sec. 19–109–33)	June 6, 1879	W. & St. P. R. R. Co.
SW. ¼ SE. ¼ sec. 19–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
NW. ¼ sec. 19–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
W. ½ NE. ¼ sec. 21–109–33	Nov. 24, 1873	W. & St. P. R. R. Co.
(SE. ¼ sec. 25–109–33)	May 14, 1874	St. P. & S. C. R. R. Co. 155
(SW. ¼ sec. 25–109–33)	May 14, 1874	St. P. & S. C. R. R. Co.
(E. ½ NE. ¼ sec. 25–109–33)	May 14, 1874	St. P. & S. C. R. R. Co.
(NW. ¼ sec. 25–109–33)	May 14, 1874	St. P. & S. C. R. R. Co.
NW. ¼ sec. 29–109–33	Mar. 17, 1877	W. & St. P. R. R. Co.
SW. ¼ sec. 29–109–33	Mar. 17, 1877	W. & St. P. R. R. Co.
(NE. ¼ sec. 33–109–33)	May 14, 1874	St. P. & S. C. R. R. Co.
(W. ½ SE. ¼ sec. 33–109–33)	May 14, 1874	St. P. & S. C. R. R. Co. 156
(NE. ¼ sec. 35–109–33)	May 14, 1874	St. P. & S. C. R. R. Co.
(NW. ¼ sec. 35–109–34)	May 14, 1874	St. P. & S. C. R. R. Co.
W. ½ NE. ¼ sec. 31–109–33	Jan. 19, 1875	W. & St. P. R. R. Co.
(NW. ¼ SE. ¼ and lot 3 in sec. 31–109–33)	May 14, 1874	St. P. & S. C. R. R. Co.
W. ½ SE. ¼ and E. ½ SW. ¼ sec. 23–109–34	Nov. 24, 1873	W. & St. P. R. R. Co.
(NE. ¼ sec. 21–109–35)	June 6, 1879	W. & St. P. R. R. Co.
53 SE. ¼ SW. ¼ (SE. ¼ 21–109–35)	June 6, 1879	W. & St. P. R. R. Co. 157
(SE. ¼ sec. 5–108–35)	Nov. 24, 1873	W. & St. P. R. R. Co.
(SE. ¼ sec. 21–109–36)	June 7, 1873	W. & St. P. R. R. Co.
(NE. ¼ sec. 27–109–36)	June 7, 1873	W. & St. P. R. R. Co.
(NW. ¼ sec. 27–109–36)	June 7, 1873	W. & St. P. R. R. Co.
(SE. ¼ sec. 27–109–36)	June 7, 1873	W. & St. P. R. R. Co.
(SW. ¼ sec. 27–109–36)	June 7, 1873	W. & St. P. R. R. Co.
(NE. ¼ sec. 29–109–36)	June 7, 1873	W. & St. P. R. R. Co. 158
(NW. ¼ sec. 35–109–36)	June 7, 1873	W. & St. P. R. R. Co.
(SW. ¼ sec. 35–109–36)	June 7, 1873	W. & St. P. R. R. Co.

EXHIBIT A.—Continued.

Description.	Date of certification.	For what company.
(E. ½ NE. ¼ sec. 25–108–38)	May 14, 1874	St. P. & S. C. R. R. Co.
W. ½ NE. ¼ sec. 25–108–38	May 14, 1874	St. P. & S. C. R. R. Co.
(S. ½ NE. ¼ and S. ½ NW. ¼ sec. 5–108–33)	May 14, 1874	St. P. & S. C. R. R. Co.
W. ½ SE. ¼ sec. 25–108–38	June 7, 1873	St. P. & S. C. R. R. Co.
159 (SW. ¼ sec. 29–110–27)	Dec. 1, 1862	W. & St. P. R. R. Co.
(NW. ¼ sec. 29–110–27)	Dec. 1, 1862	W. & St. P. R. R. Co.

(Endorsed:) Answer filed Dec. 12th, 1892. Oscar B. Hillis, clerk.

54 [Title of cause.]

160 *Answer of the Winona and Saint Peter Land Company.*

The Winona and Saint Peter Land Company, one of the defendants above named, for its separate answer to the bill of complaint of the above-named complainant, saith:

First. This defendant admits that it is a corporation duly incorporated and existing under and pursuant to the laws of the State of Minnesota, and admits that the Winona and Saint Peter Railroad Company, one of the defendants above named, is now, and
161 during the time in said bill of complaint stated has been, one of the railroad corporations of the State of Minnesota, duly organized and existing under and by virtue of the laws of said State; and, further, this defendant admits that it and the said Winona and Saint Peter Railroad Company and the Minnesota Land and Investment Company are citizens of said State, but that, whether or not George Pechtel and the other defendants in said bill of complaint mentioned are each and all citizens of, and residing within said State, this defendant has no information, and therefore denies the same.

162 Second. This defendant further admits and avers that the Transit Railroad Company referred to in said bill of complaint was, as alleged therein, a corporation duly created under and by virtue of the laws of the Territory and State of Minnesota,
55 having all the rights, powers, property, and franchises alleged in said bill of complaint, and that said railroad company was entitled to and competent to take and hold the grant and benefits conferred upon the Territory and future State of Minnesota by the provisions of an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate
163 sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," which act of Congress was approved March 3rd, A D. 1857.

Third. This defendent further admits and avers that by various acts of the legislature of said Territory and State of Minnesota, the said The Winona and Saint Peter Railroad Company duly ac-

quired and succeeded to all the rights, property, immunities, and franchises of said Transit Railroad Company, and also acquired all 164
the rights, claims, immunities, and franchises conferred upon said Transit Railroad Company by various legislative and other acts of said Territory and State of Minnesota, including the right to the lands granted by Congress to aid in the building of certain lines of railroads in said State.

Fourth. Further answering said bill of complaint this defendant admits to be true all the facts set forth in the fourth and fifth subdivisions thereof, except that portion of subdivision five which purports to state what lands were reserved and excepted from the 165
operation of said grant and as to that part of said subdivision five, this defendant expressly denies the same.

Fifth. For a further answer this defendant admits that
56 said act of Congress as aforesaid was thereafter amended by act of Congress as alleged in the sixth subdivision of said bill of complaint and also admits the facts stated in the seventh and eighth subdivisions of said bill of complaint are true, except that portion of the eighth subdivision purporting to state the time when the line of the said The Winona & Saint Peter Railroad was 166
definitely fixed and located west on range 25 and up to and including range 36 and as to that part of said bill of complaint, this defendant expressly denies the same and avers that said railroad between the aforesaid points was surveyed and located between ranges 29 and 31 inclusive on June 12th, 1857, and from range 31 west, up to and including range 36, the line or route of said road was surveyed and staked out on the surface of the earth and definitely fixed and located the 5th, 6th, 7th, 8th, and 9th days of April, 1864.

Sixth. This defendant expressly denies that at that time the line 167
or route of said railroad was definitely fixed between the points mentioned in the eighth subdivision of said bill of complaint, any such alternate sections of land, mentioned and described in the ninth subdivision of said bill of complaint and designated by odd numbers, were sold or otherwise disposed of by the United States. And further, this defendant expressly denies that the right of preemption or entry under the homestead laws of the United States had attached to any of said lands or that the said lands mentioned 168
and described in said subdivision nine were excepted or reserved from the operation of the grant by reason of any of the things set forth in said ninth subdivision or otherwise.

57 This defendant also expressly denies that any valid existing entry or filing, or any entry or filing whatever, under the homestead or preemption laws of the United States had attached to said lands or any part thereof, prior to the definite fixing and locating of the line of said railroad opposite the same, and expressly 169
denies that the right of preemption or homestead entry, either legally or otherwise, had attached to said land or to any part or parcel thereof prior to the date when the line or route of said railroad was defin'tely fixed and located opposite the same.

Seventh. This defendant admits that the land described in said bill of complaint lies within the six and ten miles limits of the said grant to the said State of Minnesota for the benefit of the said Transit Railroad Company as therein alleged.

170 Eighth. For a further and separate answer and defense to the bill of complaint, this defendant avers that by section 1 of an act of Congress approved March 3rd, 1857, referred to in said bill of complaint, the United States granted to the Territory of Minnesota, to aid in the building of certain railroads therein, including a railroad "from Winona via St. Peter to a point on the Big Sioux River south of the forty-fifth parallel of the north latitude * * * every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads and branches."

171 And it was in and by said section of said act further provided: "But in case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed,

58 sold any sections or any parts thereof granted as aforesaid, or that the right of preemption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said Territory or future State to select, subject to the approval of the Secretary of the Interior, from the lands of the

172 United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of preemption have attached, as aforesaid."

And it was by section three of this act provided "That the said lands hereinbefore granted to the said Territory or future State shall be subject to the future disposal of the legislature thereof, for the purpose herein expressed and no other."

173 Ninth. That by section two of an act of the legislature approved May 22nd, 1857, entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama to aid in the construction of a certain railroad in said State, and granting certain lands to railroad companies therein named," there was granted to and vested in the said Transit Railroad Company all the interest and estate, present and prospective, of said Territory

174 and future State, in or to any and all lands granted by the United States to said Territory by said act of Congress approved March 3rd, 1857, to aid in the building of said Transit Railroad, together with all and singular the rights, privileges, and immunities

59 conferred or intended to be conferred by said act in aid of said line of road from Winona via St. Peter to the Big Sioux River.

And by the act of the legislature of the State of Minnesota,

175 approved March 10th, 1862, entitled "An act to facilitate the construction of a railroad from Winona westwardly via St. Peter to the Big Sioux River." The Winona & Saint Peter Railroad Com-

pany, complying with the conditions upon which the said grant was made, became entitled to receive from the governor of the State of Minnesota, acting for and in the name of said State, a deed in fee simple for all the lands granted to aid in the building of its said line, including the land described in the bill of complaint.

That, as defendant is informed and believes, the said The Winona 176
& Saint Peter Railroad Company, within the time and in the manner specified and required by the laws of the United States and the State of Minnesota, built, equipped, and put into operation its said line of road and became entitled to all the lands granted by Congress to aid in the building of its road, including the land described in the bill of complaint.

Tenth. Further, this defendant avers that the legal title to the lands described in the bill of complaint, together with a large quantity of other land, was duly and properly conveyed by patent or certificate from the United States to the State of Minnesota by the 177
Secretary of the Interior, and thereafter duly conveyed by said State to The Winona & Saint Peter Railroad Company, as part and parcel of the land to which said company was legally entitled
60 under and by virtue of said act of Congress and the said several acts of the legislature of said Territory and State of Minnesota.

That on the thirty-first day of October, 1867, an agreement and contract was made and entered into by and between Ashbel H. Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. 178
Cheney, Samuel N. Hoyt, and Alfred N. Hoyt, Charles F. Latham, and Danford N. Barney, as parties of the first part, and the said The Winona & Saint Peter Railroad Company, party of the second part, wherein it was recited that said parties of the first part had loaned and advanced large sums of money to the party of the second part and made, constructed, and equipped one hundred and five miles of the railroad of the said party of the second part in the State of Minnesota, and the said party of the second part is indebted to the said parties of the first part in a large sum of money on account thereof, and that the said parties have agreed upon terms 179
of liquidation, settlement, and payment of all such indebt'ness and the adjustment of all matters between them on the terms thereinafter named, and in and by said contract, after providing for a certain part of said indebtedness, the said party of the second part contracted and agreed with said parties of the first part as follows, to wit: "Now, for the residue of the said indebtedness of the said parties of the second part to said parties of the first part, the said parties of the second part hath agreed to sell and convey to said parties of the first part as many acres of land heretofore 180
granted by Congress to the State of Minnesota as the said party of the second part shall receive from said State by reason of the construction of the portion of The Winona & Saint Peter
61 Railroad heretofore constructed, to wit: One hundred and five miles thereof, extending westwardly from Winona, excepting and reserving, nevertheless, any and all parts and proceeds of such lands, if any such there be, which may be necessary

for the tracts of said railroad, or the right of way, or any depot or depot grounds thereof, or any other purpose incidental to the operation of said railroad constructed, or to be constructed, or any part thereof, which lands hereinbefore agreed to be sold shall be conveyed to the said parties of the first part, or as they shall in writing direct, whenever and as soon as the said party of the second part shall obtain title thereto under such acts of Congress, the lands to be conveyed as aforesaid, to be selected as follows: Beginning at Winona aforesaid and from thence proceeding on each side of said railroad on a course running parallel therewith and embracing each of the six, ten, fifteen, and twenty mile limits of the Congressional land grants, and in proceeding taking all lands within each and all of said limits which shall be received by said company under said acts of Congress or either of them, it being understood that on each side of the said railroad a uniform line of advance westwardly shall be maintained as nearly as may be until as many acres shall have been received for the construction of the portion of said railroad which was completed, which is estimated to be one hundred and five miles thereof, extending northerly and westerly from Winona aforesaid, it being understood that said parties shall receive as many acres as shall be received by the said parties of the second part for the construction of said one hundred and five miles, or so much thereof as is now constructed, notwithstanding that under said act of Congress the said lands are certified upon completion of sections of not less than ten miles of railroad, but reserving, excepting, and deducting from the said number of acres of lands necessary for the track of said railroad and the said party of the second part agrees to acquire the title of said lands as fast as it may be permitted to do under said act of Congress and to release and convey to the said parties of the first part, or to such person or persons, in such manner, and from time to time, as may be devised by the said parties of the first part, or their counsel, on the request of the said parties of the first part, or a majority of them, and will do any and every other act and thing necessary and proper to secure the parties of the first part said lands and every part and parcel thereof. If it shall be hereafter determined that the same shall be sold by the said parties of the second part for the benefit of the said parties of the first part, and until the final arrangements shall be made with reference thereto, the title shall be held by the said parties of the second part; and as some time is necessary to enable said parties of the first part to confer and agree upon the details in relation to holding the title and the mode of disposing of said lands, this clause is inserted to express the agreement of the parties in relation thereto;" which contract was duly signed, sealed, and witnessed and acknowledged.

Eleventh. That in April, 1876, Ashbel H. Barney, Jesse Hoyt, Alfred M. Hoyt, Samuel N. Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, N. C. Barney, and Charles T. Barney duly associated themselves together and incorporated, pursuant to the laws of the said State of Minnesota, under the name and style of The Winona and Saint Peter Land Company. That after the due and proper organization of said

company its stock was duly issued and for value received, sold to the parties above named and to others, who thereby became and ever since have, and are now, stockholders in said company. That subsequent to the organization of said company, to wit: Between 187
the 3rd day of April, 1878, and for a good and valuable consideration received, a majority of the parties of the first part in said contract named requested the said The Winona & Saint Peter Railroad Company to convey to this defendant, and pursuant to the terms of said contract, the said The Winona & Saint Peter Railroad company, for a good and valuable consideration, did between the dates last aforesaid, duly convey to this defendant, together with other lands, the following pieces or parcels of land mentioned and described in said bill of complaint, to wit: 188

Subdivision.	Sec.	Twp.	R.	Subdivision.	Sec.	Twp.	R.
Und. ¼ SW. ¼	1	108	32	NW. ¼ of SW. ¼	9	109	33
Und. E. ½ of NW. ¼	1	108	32	E. ½ of NE. ¼	11	109	33
Und. W. ½ of NW. ¼				W. ½ of NE. ¼	11	109	33
Und. W. ½ of NE. ¼				N. ½ of NW. ¼	11	109	33
N. ½ of SE. ¼	3	109	33	SE. ¼ of NW. ¼	11	109	33
S. ½ of SE. ¼	3	109	33	SW. ¼ of NW. ¼	11	109	33
N. ½ of SW. ¼	3	109	33	NW. ¼ of NW. ¼	19	109	33
S. ½ of SW. ¼	3	109	33	NE. ¼ of NW. ¼	19	109	33
E. ½ of SE. ¼	5	109	33	S. ½ of NW. ¼	19	109	33
W. ½ of SE. ¼	5	109	33	SW. ¼ of SE. ¼	19	109	33
E. ½ of NE. ¼	9	109	33	W. ½ of NE. ¼	21	109	33
W. ½ of NE. ¼	9	109	33	NW. ¼	29	109	33
E. ½ of NW. ¼	9	109	33	E. ½ of SW. ¼	29	109	33
W. ½ of NW. ¼	9	109	33	W. ½ of SW. ¼	29	109	33
NW. ¼ of SE. ¼	9	109	33	W. ½ of NE. ¼	31	109	33
SW. ¼ of SE. ¼	9	109	33	W. ½ of SE. ¼	23	109	34
64 E. ½ of SW. ¼	9	109	33	E. ½ of SW. ¼	23	109	34
SW. ¼ of SW. ¼	9	109	33				

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That until sold and conveyed, as hereinafter stated, this defend- 191
ant was and continued to be the absolute owner in fee of said last above described, having purchased the same in good faith and for a valuable consideration as aforesaid.

Twelfth. That since obtaining said land last above described, and the title thereto as aforesaid, this defendant has, for value received, sold or contracted to sell, all of the land last above described to actual settlers and others who have for many years been occupying said lands, cultivating the same and who have made valuable 192
improvements thereon, relying upon their title thus obtained from the Government through the State to said The Winona & Saint Peter Railroad Company and this defendant.

65 Thirteenth. Further answering said bill of complaint this defendant avers that a controversy having arisen between the parties of the first part, mentioned in the contract referred to in the eleventh subdivision of this answer, and the said The Winona & Saint Peter Railroad Company, the party of the second part, as 193
to the quantity of land which the said parties of the first part were entitled to thereunder, Ashbel H. Barney, Jesse Hoyt, Alfred M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith, and Benjamin P. Cheney, parties of the first part in the said contract named, and their lawful heirs and

representatives, duly commenced an action in the district court, sixth judicial district, Blue Earth County, Minnesota, against the said The Winona & St. Peter Railroad Company to recover the lands to which they claimed to be entitled under and by
194 virtue of the terms and conditions of said contract and which the said The Winona & St. Peter Railroad Company refused to convey. That thereafter, on the petition of the said The Winona & Saint Peter Railroad Company said action was removed to the United States circuit court in and for the district of Minnesota and prosecuted in said United States circuit court to final judgment and thereafter appealed to the Supreme Court of the United States. That thereafter, to wit, on the 7th day of March, 1887, and pursuant to the order and judgment of the Supreme Court of
195 the United States, made and entered in said action, and in executing the mandate of the said Supreme Court therein, the circuit court of the United States in and for said district, made and filed its final decree in said action wherein and whereby the said
66 The Winona & Saint Peter Railroad Company was directed to "convey forthwith to The Winona & Saint Peter Land Company as a majority of the plaintiffs and a majority of the obligees in said contract having requested," a large quantity of lands lying and being within the six, ten, and fifteen miles' limits
196 of said grant, a portion thereof being a part of the lands mentioned in said bill of complaint more particularly described as follows, to wit:

Subdivision.	Sec.	Twp.	R.	Subdivision.	Sec.	Twp.	R.
NE. ¼ of NE. ¼	3	108	32	NE. ¼	33	109	33
197 NW. ¼ of NE. ¼	3	108	32	W. ½ of SE. ¼	33	109	33
SE. ¼ of NE. ¼	3	108	32	N. ½	35	109	33
198 SW. ¼ of NE. ¼	3	108	32	67 NW. ¼ of SE. ¼ and lot 3	31	109	33
SE. ¼ of NE. ¼	5	108	32	SE. ¼	5	108	35
SW. ¼ of NE. ¼ and E. ½ of 199 NW. ¼	5	108	32	W. ½ of NE. ¼	21	109	35
SE. ¼	21	109	32	E. ½ of NE. ¼	21	109	35
SW. ¼ of NW. ¼	27	109	32	SE. ¼	21	109	35
N. ½ of NW. ¼	27	109	32	SE. ¼	21	109	36
SW. ¼	27	109	32	E. ½ of NE. ¼	27	109	36
W. ½ of NW. ¼	35	109	32	W. ½ of NE. ¼	27	109	36
SW. ¼ of SW. ¼	35	109	32	E. ½ of NW. ¼	27	109	36
NE. ¼	35	109	32	W. ½ of NW. ¼	27	109	36
E. ½ of SW. ¼	31	109	32	N. ½ of SE. ¼	27	109	36
W. ½ of SW. ¼	31	109	32	S. ½ of SE. ¼	27	109	36
NW. ¼ of SE. ¼	19	109	33	SW. ¼	27	109	36
W. ½ of SE. ¼	19	109	33	NE. ¼	29	109	36
E. ½ of NE. ¼	25	109	33	E. ½ of NW. ¼	35	109	36
E. ½ of NW. ¼	25	109	33	W. ½ of NW. ¼	35	109	36
W. ½ of NW. ¼	25	109	33	SW. ¼	35	109	36
N. ½ of SE. ¼	25	109	33	S. ½ of NE. ¼	5	108	33
200 S. ½ of SE. ¼	25	109	33	S. ½ of NW. ¼	5	108	33
SW. ¼	25	109	33				

And pursuant to said order of the said circuit court of the United States the said The Winona & Saint Peter Railroad Company did, on the 28th day of November, 1887, duly convey to this defendant all the lands last above described, together with other lands mentioned and described in said final decree. That the lands last above described and the title thereto was accepted and received by this defendant from the said The Winona & Saint Peter Rail-

road Company, pursuant to the decree of the said United States circuit court, and in good faith, for a valuable consideration and upon the belief that the said The Winona & Saint Peter Railroad Company had a good and valid title thereto, and not otherwise. 201

That since receiving the title to the said lands, as aforesaid, this
68 defendant has, for value received, sold, or contracted to sell, to actual settlers and others, the following described pieces and parcels of the land described in the bill of complaint herein so received as aforesaid, to wit:

Subdivision.	Sec.	Twp.	R.	Subdivision.	Sec.	Twp.	R.	
NW. ¼ of NE. ¼	3	108	32	N. ½	35	109	33	202
SW. ¼ of NE. ¼	3	108	32	NW. ¼ of SE. ¼ and lot 3	31	109	33	
SE. ¼ of NE. ¼	5	108	32	W. ½ of NE. ¼	21	109	35	
SW. ¼ of NE. ¼ & E. ½ of NW. ¼	5	108	32	E. ½ of NE. ¼	21	109	35	
				SE. ¼	21	109	35	
SE. ¼	21	109	32	E. ½ of NE. ¼	27	109	36	
SW. ¼ of NW. ¼	27	109	32	W. ½ of NE. ¼	27	109	36	
N. ½ of NW. ¼	27	109	32	E. ½ of NW. ¼	27	109	36	
SW. ¼ of SW. ¼	35	109	32	W. ½ of NW. ¼	27	109	36	
NE. ¼	35	109	32	N. ½ of SE. ¼	27	109	36	
E. ½ of SW. ¼	31	109	32	S. ½ of SE. ¼	27	109	36	203
E. ½ of NW. ¼	25	109	33	SW. ¼	27	109	36	
W. ½ of NW. ¼	25	109	33	NE. ¼	29	109	36	
N. ½ of SE. ¼	25	109	33	E. ½ of NW. ¼	35	109	36	
S. ½ of SE. ¼	25	109	33	W. ½ of NW. ¼	35	109	36	
NE. ¼	33	109	33	S. ½ of NE. ¼	5	108	33	204
W. ½ of SE. ¼	33	109	33	S. ½ of NW. ¼	5	108	33	

69 That all of the lands last above described are either owned or held under contract from this defendant by actual occupants, who, since the date of receiving title thereto, or obtaining possession thereof under their said contracts or conveyances, have occupied and been cultivating the same and have made valuable improvements thereon, relying upon the title received by them from the General Government through the State of Minnesota, The Winona & Saint Peter Railroad Company, and this defendant. 205

Fourteenth. That the said N. C. Barney, one of the incorporators of this defendant and a stockholder therein, is a son and one of the heirs of the said Danford N. Barney, deceased, one of the parties of the first part in said contract named; that his said father owned a large interest in the land secured by said contract, and that upon the final settlement of his said father's estate he released to the other heirs of the Danford N. Barney his right and interest and to so much of the same as equalled his said father's said interest in said lands and accepted, in lieu thereof, his father's said interest in the land aforesaid, and took and received therefor the stock of this defendant, to which he was entitled as such heir. 206

Fifteenth. Further, this defendant avers on information and belief that at the time of purchasing said land and receiving the deeds therefor, as aforesaid, from said railroad company, and for a long time prior and subsequent thereto, it was uniformly held and decided by the Attorney-General of the United States, the Secretary of the Interior, and other officers of the Land Department of the United States, 207
70 and by the governor and other executive officers of the courts of the State of Minnesota, that the line of a railroad became

and was definitely fixed and that the grant of land to aid in the building of such railroad attached, and that the rights of such rail-
208 road companies to the fee of the odd-numbered sections within the granted limits attached, as against any homestead or preemption filing or entry thereafter initiated, as soon as, and when the line of such railroad company was surveyed, staked out, and marked on the face of the earth, and that no valid homestead filing or preemption entry could thereafter be made upon such odd-numbered sections within the limits of the grant. And in pursuance of and according to the aforesaid rules and decisions, the grant to aid in the building of the said The Winona & Saint Peter Railroad up to and beyond range 36, was adjusted and administered by the Supreme
209 Court of the United States and by the Secretary of the Interior and other officers of the Land Department of the United States. Relying and acting upon the correctness of said rules and decisions, the lands granted to the Territory or State of Minnesota to aid in the building of the said The Winona & Saint Peter Railroad, were certified to said State for the benefit of the said company owning said road, including the land involved in this suit, and thereafter said land was conveyed to said railroad company by said State and by said
210 railroad company, for a valuable consideration, conveyed to this defendant and other purchasers, many of whom settled on and have made valuable improvements thereon. That each and all of said rules and decisions were promulgated and enforced by the Secretary of the Interior and other officers of the United States whose
71 duty it was to adjust and administer said grant, and the land inuring to said grant in accordance with said rules and decisions, including the land in controversy, were by said officers charged to the said grant and deducted from the quantity of lands which said railway company was entitled to receive thereunder.
211 That not until long after this defendant obtained title to the land in question aforesaid did the United States or any officer thereof question the right of this defendant or the validity of its title to any part of said land. That the rules and decisions in accordance with which the grant to the State of Minnesota to aid in the building of the railroad of the said The Winona & Saint Peter Railroad Company was administered long since became rules of property that can not now be discharged without doing an injustice or irreparable injury to this defendant and many others who innocently and for
212 value purchased their said land, relying thereon and without notice or knowledge that the Government had or would ever claim any right or interest whatever in their lands. That for the United States to now reverse the rules and decisions heretofore made as aforesaid, would take advantage of its wrong or negligence and unjustly deprive this defendant of its legal property rights without any fault or negligence on its part.

Sixteenth. This defendant alleges that there is a defect of parties defendant herein, in that the State of Minnesota, one of the defend-
213 ant's grantors, is not a party defendant in this suit, and this defendant insists that said State is a necessary and indispensable party defendant, and that without its presence this court should not

and can not proceed with the hearing or trial, or grant the
72 relief prayed for or any relief against this defendant. This defendant further alleges that the United States as complainant can not and should not maintain this suit because of the laches and delay in alleging or claiming that the certification of the said land to the State was irregular and unauthorized, and because the officers of the United States, whose duty it was to construe, 214
adjust, and administer said grant, certified to the State the land in question as inuring to the State under the said grant. That except as hereinbefore admitted, qualified, or expressly denied, this defendant denies each and every allegation in said bill of complaint contained.

Wherefore, this defendant prays that it may hence be dismissed with its reasonable cost and charges in this behalf wrongfully sustained.

J. A. TAWNEY AND
H. M. LAMBERTON,
Defendant's Solicitors, Winona, Minnesota. 215

THE WINONA AND SAINT PETER LAND CO.
By H. W. LAMBERTON,
Land Commissioner.

73 [Title of cause.] 217

Answer of Heinrich Dohrman.

Heinrich Dohrman, one of the defendants in the above-entitled action, for his separate answer to the bill of complaint of the above-named complainant, saith:

First. This defendant admits on information and belief that The Winona & Saint Peter Railroad Company, The Winona and Saint Peter Land Company, and The Minnesota Land and Investment Company are and during the time in said bill of complaint stated 218
have been corporations incorporated and existing under and by virtue of the laws of the State of Minnesota.

Further answering said bill of complaint, said defendant admits all those matters and things therein stated concerning the organization of The Transit Railroad Company, and that The Winona & Saint Peter Railroad Company succeeded to the rights, immunities, franchises, and privileges conferred upon the said Transit Railroad Company by acts of the legislature of the Territory and State of Minnesota. 219

Second. For a further and separate answer to said bill of complaint, this defendant admits that by act of Congress approved March 3rd, 1857, there was granted to the Territory of Min-
74 nesota certain lands therein situated, to aid in the construction of certain lines of railroad in said Territory and future State of Minnesota, as alleged in said bill of complaint; that The Winona & Saint Peter Railroad Company, by subsequent legislation on the part of said Territory and State of Minnesota, became 220
entitled to and received a portion of said lands lying and being in the counties through which its said line of road was surveyed and

definitely located, as set forth in said bill of complaint; that the north half (½) of the southeast quarter (¼) of section (3) in township one hundred and nine (109), north of range thirty-three (33) west, described in said bill of complaint, was a part and parcel of the lands to which this defendant is informed and believes the said Winona & Saint Peter Railroad Company was entitled under the said act of Congress hereinbefore referred to; that said land last-
221 above described was duly certified by the Secretary of the Interior of the United States, in pursuance to said grant, to the State of Minnesota for the benefit of the said Winona & Saint Peter Railroad Company; that thereafter the said land was by deed duly and properly conveyed by the governor of said State of Minnesota to the said Winona & Saint Peter Railroad Company, and thereafter, to wit, on the 2nd day of April, 1878, was duly sold and conveyed by said railroad company to the said Winona and Saint Peter Land Company, and that thereafter, to wit, on May 23rd, 1887, the said
222 Winona and Saint Peter Land Company, for value received, duly sold to this defendant the lands hereinbefore described, and said Winona and Saint Peter Land Company, on the day last above mentioned, agreed to convey all its right, title, and interest
75 in and to said land to said defendant upon his complying with the terms and conditions of such sale; that all the terms and conditions of such sale and purchase as aforesaid have been duly complied with by this defendant, and that he is now and was at the time of the commencement of said action in possession
223 of said premises, and together with his wife and family occupying the same as the owner thereof under said contract of sale; that since purchasing said land as aforesaid this defendant has made valuable improvements thereon, amounting in the aggregate to the sum of four hundred dollars, and that during all of said time he has been cultivating said land and raising crops thereon.

Third. For a further answer to said bill of complaint this defendant avers that he purchased said lands in good faith and for a valuable consideration and without any notice or knowledge what-
224 ever that the Government had or claimed to have any right, title, or interest therein; that he purchased the same in good faith, with the full belief that he was obtaining the absolute title in fee simple thereto, and that since purchasing the same as aforesaid he has paid all the taxes levied thereon, and he has paid to the Winona and Saint Peter Land Company, in consideration of his obtaining possession of said land and of its agreement to convey the same to him in fee simple, the sum of eight hundred eighty-two and 12-100 dollars; that an irreparable injury will be done to this defendant,
225 who innocently and for value purchased said land, relying upon the acts of the Government in certifying the same to the State, for the benefit of the Winona & Saint Peter Railroad Company and upon the title to said land, as shown by the public records
76 of the county in which the same is situated, if the Government now, after years of delay, should be held entitled thereto and thus deprive this defendant of his improvements, the money paid by him for the purchase of said property and for taxes

levied thereon and the benefit of his labor, and the labor of his family in improving and cultivating the same. 226

Wherefore this defendant prays that he may be hence dismissed with his reasonable costs and charges in his behalf wrongfully sustained.

JAMES A. TAWNEY,
HENRY M. LAMBERTON,
Defendant's Solicitors, Winona, Minnesota.

The answers of the defendants Dorothea Wagner, Carl Piske, 227
John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, and Frank Schroepfer are substantially the same as the foregoing answer of Heinrich Dohrman, differing only as to land claimed, time of purchase, amount paid, and value of lands and improvements which are shown in the testimony of such of said defendants as have testified in this cause.

77 [Title of cause.]

Answer of Jacob Duncan. 229

The defendant Jacob Duncan, for a separate answer to the bill and amended bill of complaint in the above-entitled action, says:

I. That he admits each and every allegation therein contained.

II. The defendant, further answering, alleges that he is now, and for more than five years last past has been, in the actual and exclusive possession of the southwest quarter (¼) of section twenty-seven (27), township one hundred and nine (109) north, of range thirty- 230
two (32) west, described in the complaint; that he has all of said land under cultivation and has placed thereon permanent and valuable improvements worth and of the value of one thousand five hundred ($1,500.00) dollars, including a residence in which the defendant lives; that said land is worth and of the value of thirty-two hundred ($3,200.00) dollars; that at the said time when the defendant took possession of said premises he was a citizen and resident of the United States and over the age of twenty-one years, and duly qualified to enter said lands under the laws of the United 231
States; that he took up his residence upon said land and continued to reside upon and improve said land with intent to enter the same under the laws of the United States; that thereafter and long
78 prior to the commencement of this action he duly made and filed his application for said land, and duly made the affidavit and duly paid the fees and commissions required by law to enter said land under the homestead act; that his said application was rejected, and thereafter this defendant duly took an appeal from said decision and rejection to the honorable Commissioner of the 232
General Land Office at Washington, where said appeal is now pending; that at the time when this defendant made his said application and the same was rejected as aforesaid, the said land was part and parcel of the unappropriated public lands belonging to the complainant and subject to entry in the United States land office at Tracy, Minnesota, where this defendant made his application.

Wherefore this defendant asks that in case the complainant herein
233 prevails in this action that he be permitted to acquire said land under the laws of the United States and for his costs and disbursements herein.

GEORGE W. SOMERVILLE,
Attorney for the Defendant Jacob Duncan,
Sleepy Eye, Minnesota.

Dated February 23, 1893.

The answers of the defendants George Lent, George Ebilsisor, John Nowak, William Schultz, and Edward Casey are substan-
234 tially the same as the foregoing answer of Jacob Duncan, differing only as to land described, time of occupation, value, and improvements.

79 [Title of cause.]

235 *Answer of John Haala.*

The defendant, John Haala, for a separate answer to the bill and amended bill of complaint in the above-entitled action, says:

I. He denies the same, and each and every part and portion thereof not hereinafter specifically admitted.

II. The defendant alleges that during the five years last past he has been, and now is, a citizen of the United States.

236 III. The defendant, further answering, alleges that on the fourth day of September, 1889, the Winona and St. Peter Land Company was the owner of the west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section thirty-three (33), township one hundred and nine (109), north of range thirty-three (33) west, in Brown County, Minnesota; and on said day said company, for and in consideration of eight hundred dollars, then and there paid and to be paid by this defendant, sold and agreed to convey to this defendant, by warranty deed, said above-described premises; that immediately there-
237 after this defendant went into possession of said premises, and has kept up his payments on said purchase, and paid thereon the sum of four hundred and seventy-eight dollars; and has placed upon said premises permanent and valuable improvements, worth
80 and of the value of two hundred and fifty dollars, and has paid the taxes thereon since his said purchase.

IV. That this defendant purchased said premises in good faith, and for a valuable consideration and without any notice, knowledge,
238 or information as to any outstanding or adverse title, interest, claim, or equity in or to said premises.

V. This defendant, further answering, alleges that he is the owner of said premises, and that the same are worth and of the value of twelve hundred dollars.

VI. That the said Winona and St. Peter Land Company became the owner thereof in the manner and form set forth in the answer of the defendant herein, to wit, the Winona and St. Peter Railroad Company, which answer in respect to said title is hereby
239 referred to for greater particularity, and hereby made a part hereof.

Wherefore, this defendant asks that in case the complainant herein prevails in this action that he be permitted to acquire said lands according to the provisions of the act of Congress of March 3rd, 1887, and for his costs and disbursements herein.

Dated December 28th, 1892.

GEO. W. SOMERVILLE,
Atty. for the Defendant John Haala, Sleepy Eye, Minnesota.

The answers of the defendants, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel 240
81 Remiger, Fredrick W. Horman, Wolfgang Brandl, William Strassburg, Michael Strum, Charles Feiser, Wenzel Schiller, Emil Altermatt, and Ludwig Remus, are substantially the same as the foregoing answer of John Haala, differing only as to land 241 claimed, time of purchase, amount paid, and value of lands and improvements.

82 [Title of cause.] 244

Answer of William Schultz.

The defendant, William Schultz, for a separate answer to the bill and amended bill of complaint in the above-entitled action, says:

That he disclaims all right, title, and claim to any estate of inheritance or freehold in any of the premises therein described.

Dated February 25th, 1893.

GEO. W. SOMERVILLE,
Attorney for the Defendant 245
William Schultz, Sleepy Eye, Minnesota.

The answer of Hans J. Knudson is also a disclaimer of interest.

To all the foregoing answers, except those of Schultz and Knudson, general replications were duly filed. The remaining defendants have not answered.

83 [Title of cause.]

Stipulation as to pleading conveyances.

It is hereby stipulated by and between the counsel for the com- 247
plainant and counsel for the defendant The Winona & Saint Peter Railroad Company, as follows:

That the several conveyances by the Winona & St. Peter Railroad Company and the Winona & St. Peter Land Company and the grantees of either, and the dates of said conveyances, may be offered in evidence with the same force and effect as if the same had been specifically pleaded and set up in the answer of the defendant, The Winona & St. Peter Railroad Company, and for the purpose of showing the laches in bringing the suit, or the bar of the statute 248
of limitations of the State of Minnesota, or the acquiescence of the complainant in the title of the said defendant and its grantees; saving, however, to the complainant the right to object to such evi-

dence and the effect thereof for any and all reasons, except for the reason that such conveyances and their dates are not specifically pleaded and set up in the answer of the said The Winona & St. Peter Railroad Company.

THOMAS WILSON,
LLOYD W. BOWERS,
249 *Solicitors for Defendant.*
ROBERT G. EVANS,
Counsel for Complainant.

Dated St. Paul, Minnesota, this 29th day of December, A. D. 1892.

84 [Title of cause.]

250 *Agreed statement of facts.*

It is hereby stipulated and admitted by and between the above-named complainant and the aboved-named defendants, the Winona & St. Peter Railroad Company and the Minnesota Land and Investment Company, for the purposes of the trial of the above entitled action:

(1) That the Transit Railroad Company was a corporation duly created, organized, and existing under the laws of the Territory and State of Minnesota, and one of the beneficiaries of the grants of land made by the United States to the State of Minnesota by the
251 act of March 3rd, 1857, hereinafter referred to.

(2) That the Winona & St. Peter Railroad Company succeeded to all the rights, property, privileges, immunities, and franchises of the said Transit Railroad Company, and became one of the beneficiaries of the said act of Congress above referred, and of the act of Congress approved March 3rd, 1865, granting lands to the State of Minnesota to aid in the building of certain lines of railroad, as hereinafter referred to.

(3) That the Winona & St. Peter Land Company was and is
252 a corporation created by and existing under the laws of the State of Minnesota, authorized to take, hold, and convey lands.

(4) That the St. Paul & Sioux City Railroad Company is
85 a corporation created by and existing under the laws of the State of Minnesota, and one of the beneficiaries of the said act of Congress granting lands to Minnesota, approved March 3rd, 1857, above referred to, and of an act of Congress approved May 12, 1864, entitled "An act for the grant of lands to the State of Iowa
253 in alternate sections, and to aid in the construction of a railroad in said State," hereinafter referred to.

(5) That each and every act of Congress and of the legislature of the Territory or State of Minnesota referred to in either the bill of complaint or answer herein shall be considered as offered and received in evidence, and may be read before any court in which this suit is pending from the printed volumes in which the same is found without formally offering the same in evidence herein.

(6) That the said Transit Railroad Company and this defendant,
254 the Winona & St. Peter Railroad Company, were authorized and empowered to build, equip, and put into operation a line of road

from Winona westerly via St. Peter to a point on the Big Sioux River south of the forty-fifth parallel of north latitude; and the State of Minnesota granted to them all the lands granted by Congress to aid in the building of said line of road, and the St. Paul & Sioux City Railroad Company, by the name of the Minnesota Valley Railroad Company, was authorized and empowered by the laws of the Territory and State of Minnesota to build, equip, and put into operation a line of railroad from St. Paul and from St. 255
Anthony via Minneapolis to a point of junction at Shakopee City,
in the county of Scott, and via Belle Plaine, Clarksville,
86 Le Sueur, Traverse des Sioux, St. Peter, Kasota, Mankato,
and South Bend to the southern boundary of the Territory of Minnesota in the direction of the mouth of the Big Sioux River; and the said State and Territory granted to and conferred upon said St. Paul & Sioux City Company all the lands granted by Congress to aid in the building of said line of road. 256

(7) That the said Transit Railroad Company surveyed and staked out and fixed its line of road on the face of the earth from Winona westwardly to the west line of range 31 on and before the 17th day of July, 1857, and the line so surveyed and staked out was on said day, by resolution of the board of directors of said company, adopted as the line of definite location of said road. That said company filed its map showing the line so surveyed, staked out, and adoped as its line of definite location with the Secretary of the Interior of the United States on the 29th day of July, 1858, and not before. That said Winona & Saint Peter Railroad Company surveyed, staked 257
out, and fixed its line of road on the face of the earth from said west line of range 31 to the west line of range 37 on and before the 9th day of April, 1864, namely, between the west line of range 31 and the south line of section 5, township 109, range 32, on or before the 5th day of April, 1864; from thence to the south line of section 33, township 109, range 33, on and before April 6, 1864; thence to the west line of section 5, township 108, range 34, on and before April 7th, 1864; thence to the west line of section 12, township 108, range 36, on and before April 8th, 1864; thence to the 258
west line of range 37, aforesaid, on and before April 9th, 1864, and
on April 12th, 1864, filed in the office of the register of the
87 United States land office at St. Peter, Minnesota, that being
the district in which said line is located, a map which was by the register of that office forwarded to the Commissioner of the General Land Office at Washington, D. C., on April 15, 1864, and not before, with a letter, a copy of which is attached hereto, marked Exhibit I; and on the 28th day of April, 1864, said map was 259
returned by the Commissioner of the General Land Office to the said local land office with a letter, a copy of which is hereto attached, marked Exhibit II; and on August 3, 1864, a map of the definite location of the line of said road, as aforesaid surveyed and staked out, was filed in the office of the Commissioner of the General Land Office (but whether the map last filed as aforesaid is the very map forwarded to the Commissioner of the General Land Office by the register of the local land office at St. Peter on the 15th day of

dence and the effect thereof for any and all reasons, except for the reason that such conveyances and their dates are not specifically pleaded and set up in the answer of the said The Winona & St. Peter Railroad Company.

THOMAS WILSON,
LLOYD W. BOWERS,
249 *Solicitors for Defendant.*
ROBERT G. EVANS,
Counsel for Complainant.

Dated St. Paul, Minnesota, this 29th day of December, A. D. 1892.

84 [Title of cause.]

250 *Agreed statement of facts.*

It is hereby stipulated and admitted by and between the above-named complainant and the aboved-named defendants, the Winona & St. Peter Railroad Company and the Minnesota Land and Investment Company, for the purposes of the trial of the above entitled action:

(1) That the Transit Railroad Company was a corporation duly created, organized, and existing under the laws of the Territory and State of Minnesota, and one of the beneficiaries of the grants of land made by the United States to the State of Minnesota by the
251 act of March 3rd, 1857, hereinafter referred to.

(2) That the Winona & St. Peter Railroad Company succeeded to all the rights, property, privileges, immunities, and franchises of the said Transit Railroad Company, and became one of the beneficiaries of the said act of Congress above referred, and of the act of Congress approved March 3rd, 1865, granting lands to the State of Minnesota to aid in the building of certain lines of railroad, as hereinafter referred to.

(3) That the Winona & St. Peter Land Company was and is
252 a corporation created by and existing under the laws of the State of Minnesota, authorized to take, hold, and convey lands.

(4) That the St. Paul & Sioux City Railroad Company is
85 a corporation created by and existing under the laws of the State of Minnesota, and one of the beneficiaries of the said act of Congress granting lands to Minnesota, approved March 3rd, 1857, above referred to, and of an act of Congress approved May 12, 1864, entitled "An act for the grant of lands to the State of Iowa
253 in alternate sections, and to aid in the construction of a railroad in said State," hereinafter referred to.

(5) That each and every act of Congress and of the legislature of the Territory or State of Minnesota referred to in either the bill of complaint or answer herein shall be considered as offered and received in evidence, and may be read before any court in which this suit is pending from the printed volumes in which the same is found without formally offering the same in evidence herein.

(6) That the said Transit Railroad Company and this defendant,
254 the Winona & St. Peter Railroad Company, were authorized and empowered to build, equip, and put into operation a line of road

from Winona westerly via St. Peter to a point on the Big Sioux River south of the forty-fifth parallel of north latitude; and the State of Minnesota granted to them all the lands granted by Congress to aid in the building of said line of road, and the St. Paul & Sioux City Railroad Company, by the name of the Minnesota Valley Railroad Company, was authorized and empowered by the laws of the Territory and State of Minnesota to build, equip, and put into operation a line of railroad from St. Paul and from St. 255
Anthony via Minneapolis to a point of junction at Shakopee City,
in the county of Scott, and via Belle Plaine, Clarksville,
86 Le Sueur, Traverse des Sioux, St. Peter, Kasota, Mankato,
and South Bend to the southern boundary of the Territory of Minnesota in the direction of the mouth of the Big Sioux River; and the said State and Territory granted to and conferred upon said St. Paul & Sioux City Company all the lands granted by Congress to aid in the building of said line of road. 256

(7) That the said Transit Railroad Company surveyed and staked out and fixed its line of road on the face of the earth from Winona westwardly to the west line of range 31 on and before the 17th day of July, 1857, and the line so surveyed and staked out was on said day, by resolution of the board of directors of said company, adopted as the line of definite location of said road. That said company filed its map showing the line so surveyed, staked out, and adoped as its line of definite location with the Secretary of the Interior of the United States on the 29th day of July, 1858, and not before. That said Winona & Saint Peter Railroad Company surveyed, staked 257
out, and fixed its line of road on the face of the earth from said west line of range 31 to the west line of range 37 on and before the 9th day of April, 1864, namely, between the west line of range 31 and the south line of section 5, township 109, range 32, on or before the 5th day of April, 1864; from thence to the south line of section 33, township 109, range 33, on and before April 6, 1864; thence to the west line of section 5, township 108, range 34, on and before April 7th, 1864; thence to the west line of section 12, township 108, range 36, on and before April 8th, 1864; thence to the 258
west line of range 37, aforesaid, on and before April 9th, 1864, and
on April 12th, 1864, filed in the office of the register of the
87 United States land office at St. Peter, Minnesota, that being
the district in which said line is located, a map which was by the register of that office forwarded to the Commissioner of the General Land Office at Washington, D. C., on April 15, 1864, and not before, with a letter, a copy of which is attached hereto, marked Exhibit I; and on the 28th day of April, 1864, said map was 259
returned by the Commissioner of the General Land Office to the said local land office with a letter, a copy of which is hereto attached, marked Exhibit II; and on August 3, 1864, a map of the definite location of the line of said road, as aforesaid surveyed and staked out, was filed in the office of the Commissioner of the General Land Office (but whether the map last filed as aforesaid is the very map forwarded to the Commissioner of the General Land Office by the register of the local land office at St. Peter on the 15th day of

260 April as aforesaid there is no evidence except such as is contained in the letters hereto attached, marked Exhibits I, II, III, IIIa, IV, and V), that said map filed August 3rd, 1864, was certified to by the vice-president and chief engineer of said road as the map of definite location of said road, under date of June 8, 1864, and by the governor of the State of Minnesota on the 10th day of June, 1864, as shown in said map, a certified copy of which it is agreed shall be offered in evidence upon the trial and hearing of said cause by the complainant. That upon receipt of said map, to wit, August
261 3, 1864, diagrams were prepared showing in the limits of the grant adjusted to the location of said road as shown upon said map, and such action was then taken as is shown by a letter from the Commissioner of the General Land Office of August 10, 1864,
88 a copy of which is hereto attached and made a part hereof, marked Exhibit IV. That on August 11, 1864, the Commissioner of the General Land Office addressed to William Lamb, the then secretary of said company, a letter, a copy of which is
262 hereto attached, marked Exhibit B, and made a part hereof. That the said map filed on August 3, 1864, as aforesaid, is the only map on file in the Land Department showing the location of said road between the points named therein. That the said Winona & St. Peter Railroad Company surveyed and staked out its line of road on the face of the earth from the said west line of range 37 to and beyond the west line of range 38 on or before the second day of November, 1866, and filed its map showing the line so surveyed and staked out as its line of definite location in the office of the Secretary of the Interior on the 23rd day of February, 1867.

263 (8) That the said St. Paul & Sioux City Railroad Company surveyed, staked out, and fixed its line of route on the face of the earth from its eastern terminus to section 31, township 107, range 31, and thereafter filed its map of such survey and location as its map of definite location with the Secretary of the Interior on February 20, 1858, and surveyed, staked out, and fixed its said line on the face of the earth from said section 31, town 107, range 31, westerly to section 30, town 104, range 39, and thereafter filed its map thereof as its map of definite location with the Secretary of
264 the Interior on June 28, 1865. That when said last-named map was received at the General Land Office it was unattested by the certificate of the governor of the State of Minnesota, and the president of said railroad company was requested to obtain
89 such certificate and forward the same, which being done, it was affixed by the Commissioner of the General Land Office to said map, all of which, and his action thereon, is shown by the three letters of the Commissioner of the General Land Office, dated respectively July 14, 1865, addressed to E. F. Drake,
265 president, etc., and August 10, 1865, addressed to Stephen Miller, governor, and to the register and receiver, St. Peter, Minnesota, copies of which are hereto attached, marked Exhibits VI, VII, and VIII, and made a part hereof.

(9) That this defendant, the Winona & St. Peter Railroad Company, and the said St. Paul & Sioux City Railroad Company, each, within the time and in the manner specified and required by the laws of the United States and the State of Minnesota, built, equipped, and put into operation its said line of road, except that portion of the St. Paul & Sioux City Railroad from St. Anthony 266
via Minneapolis to Shakopee, west of the Mississippi River, which portion has never been built; and became entitled to all the lands granted in aid of such lines as so constructed, except such lands as were by the granting acts excepted from the grant.

(10) That Exhibit A, annexed to the answer of the Winona & St. Peter Railroad Company, is a list of the lands in the bill of complaint herein described, which shows the dates that each tract was certified to the State by the Secretary of the Interior of the United States, and the company for which it was so certified, and all of said lands lie within the six-miles limits of this 267
defendant, The Winona & St. Peter Railroad Company, except those in section 1, town 108, range 32, which lie in its ten-mile limits, and all of said lands lie outside of the place limits
90 of the St. Paul & Sioux City Railroad Company; those described in Exhibit B attached hereto lie within the fifteen-mile limits of said last-named road, and those described in Exhibit C lie in the twenty-mile limits of said last-named road, except the two last-named tracts in Exhibit C, which lie in the ten-mile limits of said last-named road. 268

(11) That when said act of May 12, 1864, was passed there was not remaining unsold or to which the right of preemption or homestead had not attached, sufficient lands in the alternate odd-numbered sections within twenty miles of said line of the St. Paul & Sioux City Railroad Company's road to fill the additional grant of 1864 for that part of its line so constructed as aforesaid. That it appears from the records and files of the General Land Office that homestead entries or preemption filings, prima facia regular and valid, were made upon all the several tracts of land in the bill of 269
complaint described, by the persons and at the place and times therein set forth. That such proceedings were had thereon that the proper officer, before said lands were certified to the State aforesaid, canceled all such entries or filings at the times, in the manner, and for the reasons set forth in the schedule hereto attached, marked Exhibit 9, and made a part hereof, which schedule further shows all subsequent attempted entries of said lands or filings thereon, and the disposition of such attempted entries or filings. And it is further stipulated that none of the persons who 270
made such homestead entries or preemption filings set forth in the bill of complaint have since claimed said lands, as far as shown by the records of the Land Department of the United States.
91 And after said filings had been so canceled and set aside, and before the lands were certified to the State as aforesaid, the St. Paul & Sioux City Railroad Company selected the lands so certified by the State for it as aforesaid as inuring to it under its said grants.

271 (12) That on, before, and for a long time after the certification of the lands in question to the State on account of the railroad grants it was uniformly held and ruled by the Secretary of the Interior and the other officers of the Land Department of the United States:

(a) That the line of a railroad became and was definitely fixed so as to attach the grant to the odd numbered sections within the granted limits as soon as surveyed, staked out, and marked on the face of the earth, and

272 (b) That a homestead entry in all respects regular and legal excepted the land covered hereby from the operation of a railroad grant attaching during the existence of such entry; that the validity of a homestead entry was open to question by the company, and if it was shown that such entry was fraudulent or irregular in its inception, or that it had been abandoned before the right of the road attached, it was held not to except the land from the grant, but the burden of so showing was upon the company, and in the absence of such proof, the entry being valid upon its face, was held to 273 except the land from the grant, even though subsequently abandoned; and

(c) That a preemption claim, which may have existed to a tract of land at the time of the attachment of a railroad grant, if 92 subsequently abandoned, and not consummated, even though in all respects legal and bona fide, was held not to operate to defeat the grant, but, upon the failure of such claim, the land covered thereby was held to inure to the grant as of the date when such grant became effective; and

274 (d) That the rights under the grant attached to the lands in the granted and indemnity limits as of the same date, and that selection was not deemed necessary to attach the grant to any specific tract within the indemnity limits; and

(e) That the lands within the indemnity limits were withdrawn at the same time as those within the primary or granted limits; and

(f) That within the common limits of like character of two contemporaneous grants each was held to be entitled to an undivided 275 moiety of the lands within such common limits; and

(g) That in pursuance of and in accordance with the aforesaid rule, the grants to and for each and all of the land-grant railroad companies in the State of Minnesota were, before, at, and for a long time after the certification of the lands in question, administered.

(13) That the governor of the State of Minnesota, being about to convey to the St. Paul & Sioux City Railroad Company the lands 276 certified to the State for it as aforesaid as lands inuring to it under said grant in aid of its line, the defendant The Winona & St. Peter Railroad Company, claiming the same as inuring and belonging to it under said grant to it, and in aid of its line, in the year 1875 93 commenced a suit in the district court of Wato'wan County, in the State of Minnesota, against the said St. Paul & Sioux City Railroad Company and others, in which suit this defendant, The Winona & St. Peter Railroad Company, plaintiff, therein claimed and 277 prayed judgment and decree that it was, and that the said St. Paul & Sioux City Railroad Company was not, the owner of or entitled to

said lands; and this defendant The Winona & Saint Peter Railroad Company further prayed that the St. Paul & Sioux City Railroad Company might be enjoined and restrained from applying to the governor for and from accepting and receiving from him a deed of any of said lands, and the said St. Paul & Sioux City Railroad Company appeared in and defended said suit, and such proceedings were had therein that judgment was duly rendered in February, 1879, in accordance with the said prayer of the plaintiff, and the said St. Paul & Sioux City Railroad Company having appealed to 278
the supreme court of the State of Minnesota from said judgment, it was by that court in all things affirmed in August, A. D. 1880, and the said St. Paul & Sioux City Railroad Company, having appealed from that judgment to the Supreme Court of the United States, that court, at the October term thereof in 1884, affirmed the said judgment, and in pursuance of said judgment the governor of the State of Minnesota, for and in the name of said State, conveyed said lands, in said suit described, to this defendant The Winona & St. Peter Railroad Company, and the governor of the 279
State of Minnesota, for and in the name of the State, by deed, conveyed to this defendant The Winona & St. Peter Railroad Company, in or prior to 1879, all the other lands described in the bill of complaint herein.

94 (14) That prior to 1867 Ashbel H. Barney and his associates referred to in the contract hereto annexed, marked Exhibit D, had built the line of the Winona & St. Peter Railroad Company from Winona westwardly to Waseca, over one hundred 280
miles, and the said railroad company was largely indebted to them therefor, and in that year they entered into a contract with this defendant, The Winona & St. Peter Railroad Company, a copy of which contract is hereto annexed and marked Exhibit D, and in pursuance of said contract this defendant, The Winona & St. Peter Railroad Company, conveyed to the parties designated and directed by said Barney and his associates prior to July, 1878, all the lands described in the bill of complaint herein, except those in range 38, and those which it conveyed to the Winona and St. Peter Land Company in pursuance of the judgment of the Supreme Court of 281
the United States, hereinafter referred to, and in July, A. D. 1878, the said Barney and his associates commenced an action in the district court of the State of Minnesota, in the county of Blue Earth, against this defendant, The Winona & St. Peter Railroad Company, to compel it to convey to them under the contract aforesaid all those lands in the bill of complaint herein described, a description of which is given in schedule marked Exhibit E, hereto attached, and said suit having been removed into the United States circuit court for the district of Minnesota, it was in April, 1881, decided and 282
adjudged by that court that this defendant, The Winona & St. Peter Railroad Company, should under the contract aforesaid convey the several tracts and parcels so sued for to said Barney and his
95 associates, or to such person or persons as they might indicate, which said decree was affirmed by the Supreme Court of the United States on appeal in March, A. D. 1886, and in obedience to such decree and to the direction of said Barney and his

283 associates this defendant did convey said several tracts in Exhibit E, described as aforesaid, in fee simple absolute to the Winona and St. Peter Land Company on the 28th day of November, A. D. 1887.

(15) That before the year 1873 this defendant built its railroad past all of the lands in question, and across and over some of them, yet not until the order dated March 2, 1888, to show cause why proceedings should not be taken to restore to the United States the lands in question did the United States or any officer thereof question the right of the defendant, The Winona & St. Peter Railroad
284 Company, to any part or parcel of said lands or its title, or the title of its grantees or successors in interest thereto.

(16) That the Secretary of the Interior has not demanded from the St. Paul & Sioux City Railroad Company a relinquishment or reconveyance to the United States of any of said lands, unless the evidence in this case shows acts equivalent to such demand, or facts excusing the making of the same.

(17) That these defendants admit the passage of said act of Congress of March 3rd, 1887, referred to in the bill of complaint,
285 and that demand was made by the Secretary of the Interior upon the Winona & St. Peter Railroad Company pursuant to said act at or about the date alleged in the bill of complaint for the relinquishment and reconveyance of the lands in question, except the
96 west half of section 29, town 110, of range 27, and that this defendant, The Winona & St. Peter Railroad Company, has not relinquished or reconveyed any of them, but refused so to do.

(18) That prior to May 22, 1891, every available tract designated
286 by odd numbers within the indemnity limits of the grant to the Winona & St. Peter Railroad Company had been selected by said company on account of such grant, and all such selections and claims under said grant were made prior to the year 1876, except the following:

157 22-100 acres in the indemnity limits in range 29, selected September 19th, 1877, and certified to the State November 28th, 1881.

40 acres in granted limits in range 28, selected February 9th, 1885.

287 723 28-100 acres in granted limits in ranges 24, 28, 40, and 43, selected February 9th, 1885.

160 acres in granted limits in range 35, selected July 20th, 1885.

61 19-100 acres in granted limits in range 34, selected June 17, 1887. The right of the company to this tract was contested and said land was awarded to the company by the Secretary of the Interior by his decision of January 2nd, 1890.

40 acres in granted limits in range 41, selected June 17th, 1887.

288 6 68-100 acres in granted limits in range 31, selected June 17th, 1887, was after contest awarded to the company by decision of the Commissioner of the General Land Office Nov. 14th, 1888.

No action has been taken by the Commissioner of the
97 General Land Office or the Secretary of the Interior as to any of said selections, except as above stated, and said selections were at the time of the bringing of this suit and still are pending in the Land Department and undisposed of. That as to

some of the selections made prior to 1876 no certification of lands has yet been made.

And the list hereto attached, marked Exhibit X and made a part 289
hereof, shows all the lands so selected in and prior to 1876 which had not been on March 3rd, 1887, disposed of, and the action taken and had, if any, in reference thereto since that date.

That on the 26th day of February, 1890, Messrs. Britton and Gray, attorneys for said Winona & St. Peter Railroad Company, transmitted to the General Land Office a relinquishment, a copy of which is hereto attached, marked Exhibit 11 and made a part hereof, of certain lands in said relinquishment described; and 290
accompanying said relinquishment was a letter from said attorneys, a copy of which is hereto attached, marked Exhibit 12 A and made a part hereof. Said relinquishment was returned as per letter of the Commissioner, dated March 21st, 1890, a copy of which is attached, marked Exhibit 12 B, and was refiled May 20, 1890, with letter from said Britton & Gray of that date, a copy of which is attached, marked 12 C.

(10) The lands described in said relinquishment had been erro- 291
neously certified to the State of Minnesota for the benefit of the defendant, the Winona & St. Peter Railroad Company, but as to all of said lands valid rights had in other parties become vested before the rights of the said State or said railroad company attached thereto.

98 (20) It is further stipulated that notwithstanding the stipulation of facts herein made, either party hereto may take such further or additional testimony as to it may seem proper upon the matters in controversy in this suit.

(21) Any decision or opinion purporting to have been made or 292
delivered by the Secretary of the Interior or Commissioner of the General Land Office of the United States, reported in the "Decisions of the Department of the Interior relating to Public Lands," shall in any court in which this suit may be pending be taken and held to be the opinion and decision of such officer without further or other proof thereof, and may be used on the hearing of this case.

(22) That each and every of the matters herein stipulated is sub- 293
ject to any objection thereto that may be made by either party on the ground that it is incompetent, irrecalent, or immaterial.

ROBT. G. EVANS,
Spe'l Asst. U. S. Att'y of Counsel for Complainant.

THOMAS WILSON & L. W. BOWERS,
Solicitors for the Defendants, The Winona & St. Peter R. R. Co. and the Minnesota Land and Investment Company.

Dated July 26th, 1893. 294

The within stipulation is hereby agreed to and accepted
99 by the defendants below named for the purposes of the trial of this action subject to the conditions and reservations therein set out.

J. A. TAWNEY,
H. M. LAMBERTON,

Solicitors for the following-named defendants: The Winona & St.
295 Peter Land Company, John W. Kolbe, Henry Benssman, Claus Minert, John Groebner, Dorothea Wagner, Carl Piske, Samuel D. Peterson, John Girg, Heinrich Dohrman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, and Frank Schroepfer.

Dated August 1st, 1893.

GEO. W. SOMERVILLE,

Solicitor for the following-named defendants, to wit: John Nowak, George Lent, George Ebilcisor, Jacob Duncan, Edward Casey, Hans J. Knudson, William Schultz, Wolfgang Brandl, Lud-
296 wig Remus, Emil Altermatt, Wenzel Remmiger, Frederick W. Horman, Christopher Mienzer, Ferdinand Trebisch, Fredrick Alwin, William Strassberg, Joseph Sellner, John Haala, Wenzel Schiller, Michael Sturm, and Charles Feirer.

Dated September 13th, 1893.

EXHIBIT B.

List of lands in suit lying in 15-mile limits of the St. Paul and Sioux City R. R.

297

Subdivision.	Sec.	Twp.	R.	Subdivision.	Sec.	Twp.	R.
SW. ¼	1	108	32	SW. ¼ of SW. ¼	35	109	32
E. ½ of NW. ¼ & W. ½ of NE. ¼	1	108	32	NE. ¼	35	109	32
W. ½ of NW. ¼	1	108	32	SW. ¼	31	109	32
NE. ¼ of NE. ¼	3	108	32	SE. ¼	25	109	33
NW. ¼ of NE. ¼ & S. ½ of NE. ¼	3	108	32	SW. ¼	25	109	33
100 S. ½ of NE. ¼ & E. ½ of NW. ¼	5	108	32	E. ½ of NE. ¼	25	109	33
SE. ¼	21	109	32	NW. ¼	25	109	33
SW. ¼ of NW. ¼	27	109	32	NE. ¼	33	109	33
298 N. ½ of NW. ¼	27	109	32	W. ½ of SE. ¼	33	109	33
SW. ¼	27	109	32	NE. ¼	35	109	33
299 W. ½ of SE. ¼ & E. ½ of SW. ¼	35	109	32	NW. ¼	35	109	33
W. ½ of NW. ¼	35	109	32	NW. ¼ of SE. ¼ & lot 3	31	109	33
				S. ½ of NE. ¼ & S. ½ of NW. ¼	5	108	33
				W. ½ of SE. ¼	25	108	38

EXHIBIT C.

List of lands in suit lying in 20-mile limits of St. Paul & Sioux City Railroad.

Subdivision.	Sec.	Twp.	R.	Subdivision.	Sec.	Twp.	R.
SE. ¼	5	109	33	W. ½ of NE. ¼	31	109	33
SE. ¼	3	109	33	W. ½ of SE. ¼ and E. ½ of SW. ¼	23	109	34
SW. ¼	3	109	33	NE. ¼	21	109	35
300 NE. ¼	9	109	33	SE. ¼	21	109	35
NW. ¼	9	109	33	SE. ¼	5	108	35
W. ½ of SE. ¼ and E. ½ of SW. ¼	9	109	33	SE. ¼	21	109	36
W. ½ of SW. ¼	9	109	33	NE. ¼	27	109	36
101 NE. ¼	11	109	33	NW. ¼	27	109	36
NW. ¼	11	109	33	SE. ¼	27	109	36
301 NW. ¼ of SE. ¼	19	109	33	SW. ¼	27	109	36
302 SW. ¼ of SE. ¼	19	109	33	NE. ¼	29	109	36
NW. ¼	19	109	33	NW. ¼	35	109	36
W. ½ of NE. ¼	21	109	33	SW. ¼	35	109	36
NW. ¼	29	109	33	E. ½ of NE. ¼	25	108	38
SW. ¼	29	109	33	W. ½ of NE. ¼	25	108	38

Lists of lands in suit lying in the 10-mile limits of the St. Paul & Sioux City Railroad.

Subdivision.	Sec.	Twp.	R.
SW. ¼	29	110	27
NW. ¼	29	110	27

Exhibit E. 303

Subdivision.	Sec.	Twp.	R.
NE. ¼ of NE. ¼	3	108	32
NW. ¼ of NE. ¼ and S. ½ of NE. ¼	3	108	32
S. ½ of NE. ¼ and E. ½ of NW. ¼	5	108	32
102 SE. ¼	21	109	32
SW. ¼ of NW. ¼	27	109	32
N. ½ of NW. ¼	27	109	32
SW. ¼	27	109	32
W. ½ of SE. ¼ and E. ½ SW. ¼	35	109	32
W. ½ of NW. ¼	35	109	32
SW. ¼ of SW. ¼	35	109	32
NE. ¼	35	109	32
SW. ¼ of SW. ¼	31	109	32
NW. ¼ of SE. ¼	19	109	33
SE. ¼	25	109	33
SW. ¼	25	109	33
E. ½ of NE. ¼	25	109	33
NW. ¼	25	109	33
NE. ¼	33	109	33
W. ½ of SE. ¼	33	109	33
NE. ¼	35	109	33
NW. ¼	35	109	33
NW. ¼ of SE. ¼ and lot 3	31	109	33
NE. ¼	21	109	35
SE. ¼ of SW. ¼	21	109	35
SE. ¼	5	108	35
SE. ¼	21	109	36
NE. ¼	27	109	36
NW. ¼	27	109	36
SE. ¼	27	109	36
SW. ¼	27	109	36
NE. ¼	29	109	36
NW. ¼	35	109	36
SW. ¼	35	109	36
S. ½ of NE. ¼ and S. ½ of NW. ¼	5	108	33

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305

103 Exhibit I.

Land Office, Saint Peter, Minnesota,
April 15th, 1864.

Commissioner General Land Office,
Washington, D. C.

Dear Sir: I herewith transmit plat of railroad survey as filed in this office April 12, 1864, by the Winona & St. Peter Railroad Company, and would like instructions as to claimants taking homesteads on even and odd sections within 6 and 15 mile limits. Will homestead claims made prior to the 12th inst. be allowed to enter under said act? 307

Very respectfully, your obedient servant,

A. Tibbetts, *Reg.*

Exhibit II. 308

Department of the Interior,
General Land Office,
April 28, 1864.

Register, *St. Peter, Minn.*

Sir: Your letter of the 15th inst., enclosing a map of the survey of the Winona & St. Peter Railroad under grant of March 3, 1857, has been received. The same is herewith returned that the governor's certificate may be attached thereto and that the several dates may be added to the map of the line of the road as surveyed on the

309 ground from point to point. It is necessary that the map of survey should be transmitted to the Department by the governor of the State. On its being received through him and accepted by the Department you will be directed to withhold the odd sections
104 from sale and preemption, and on our being advised of the election of the section from which indemnity is to be taken, you will be instructed on that subject.

Very respectfully, etc.,

J. M. EDMUNDS, *Commissioner.*

310 EXHIBIT III–A.

WINONA AND ST. PETER RAILWAY,
TREASURER'S OFFICE,
New York, Aug. 2, 1864.

EDWARDS, E., *Land Department, Washington.*

DEAR SIR: Herewith you will find certified maps of the extension of the surveys of the Winona & St. Peter Railroad, which have been filed in the State land office, in Minnesota. You will notice that the governor suggests that the copies be forwarded by
311 the railroad company instead of himself. If the maps are not addressed to the proper officer please place them where they belong.

Yours, respectfully,

A. H. BARNEY, *Tr.*

EXHIBIT III.

[Enclosure.]

STATE OF MINNESOTA,
OFFICE OF THE SECRETARY OF STATE,
St. Paul, July 13, 1864.

312 JOHN NEWELL, Esq.,
Supt. W. & St. P. R. R.

DEAR SIR: I send by express to-day two copies of the W. & St. P. R. R. extension plat, one having been filed in the State land office. The governor thinks it is as well for the copy which
105 is to go to Washington to be forwarded by the company. If, however, you prefer that he should do it, you have only to return it with a letter to that effect addressed to him.

Yours, very truly,

D. BLAKELY.

313 EXHIBIT IV.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Aug. 10, 1864.

REGISTER AND RECEIVER,
St. Peter, Minn.

GENTLEMEN: I herewith enclose to you a diagram of the extension of the Winona and St. Peter Railroad, showing the six and fif-

teen mile limits thereof. You will note these limits on your plats with lead pencil, and will be governed in dealing with the lands within the limits by the same rules and regulations as govern you 314
in the disposal of lands along the other parts of this road; that is, from the date of the reception of this letter the odd sections within the limits are withdrawn from sale, preemption, or homestead entry; the even sections within the six-mile limits are increased in price to $2.50 per acre.

The rights of preemptors are governed by the date of actual survey or laying down of the line of the road, as designated on the map.

You will be pleased to acknowledge the date of the receipt of this letter.

Very respectfully, etc., 315

JOS. S. WILSON,
Acting Commissioner.

106 EXHIBIT V.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
August 11th, 1864.

WILLIAM LAMB,
Winona, Minn.

SIR: I have to acknowledge the receipt of the official map of 316
survey of the line of the Winona & St. Peter Railroad from a point near New Ulm, in range 31, town. 110, westerly to a point in range 37, town. 108, and have to state that I have caused a diagram to be prepared therefrom, giving the six and fifteen mile limits, which I have transmitted to the register and receiver at St. Peter with a letter of instructions.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Acting Commissioner.

EXHIBIT VI. 317

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 14, 1865.

E. F. DRAKE, Esq.,
President Minnesota Valley R. R. Co., St. Paul, Minn.

SIR: I have received your letter of the 28th ult., enclosing a map of the survey and location of your road, formerly the Southern Minnesota, westwardly from the west line of town. 107, range 31. 318

The map is defective in this, that the governor's certificate is not annexed thereto, showing the location to have been made in pursuance of the acts of Congress making the grants and the
107 acts of the legislature of Minnesota accepting the grant and transferring the same to said company.

Upon receipt of such a certificate under seal by the State, it will be attached to the map and thereafter the map will be submitted to

the head of the Department for acceptance and approval as the
319 basis of adjustment of the grant as far as the lines of the public surveys have been established.

Very respectfully, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

EXHIBIT VII.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
August 10th, 1865.

320 His Excellency STEPHEN MILLER,
Governor of Minnesota.

SIR: I have the honor to acknowledge the receipt of your certificate under date of the 24th ult., certifying to the map of survey and location of the Minnesota Valley Railroad (formerly Southern Minnesota) westwardly from the west line of town 107, range 31, which will be placed on file and laid down on the official plats.

By letters of this date the registers and receivers at St. Peter and Winnebago City have been directed to withhold from settle-
321 ment, entry, or location all the odd-numbered sections within 20 miles of the line of said road.

Very respectfully, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

108 EXHIBIT VIII.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
August 10th, 1865.

REGISTER AND RECEIVER, *St. Peter, Minn.*

322 GENTLEMEN: A map of the survey and location of the line of route of the Minnesota Valley (formerly Southern Minnesota) Railroad from the west line of town 107, R. 31, to the west line of town 104, R. 39 west, has been filed in this office by E. F. Drake, esq., president of said Railroad Company, and it is accepted as the basis of the adjustment of the land grant.

I enclose herewith a diagram, showing the line of route of said road (through the township and ranges mentioned,) with the 6 and 15 mile limits, per act March 3rd, 1857, also the 10 and 20 mile limits, per acts May 12th, 1864, and March 3rd, 1865, and you
323 will withhold from settlement, entry, or location all the odd-numbered sections within twenty miles on each side of the road. This order will take effect from and after its reception at your office.

From and after that date the even sections within the 10-mile limits will be increased to double the ordinary minimum price as per the 4th section act March 3rd, 1865, pam. laws, p. 526.

The proviso to the 3rd section of this act excepts, in favor of the Minnesota Valley Railroad, any lands falling within the additional limits of the roads therein provided for.

324 You will acknowledge the date of the receipt of this order.

Very respectfully, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

109 EXHIBIT IX.

Schedule of entries and filings upon the lands involved; proceedings relating thereto, with synopsis of testimony in each case, and final disposition.

SW. ¼ sec. 1, T. 108, R. 32. 325

Home entry 1331, Thomas Thompson, May 24, 1864, cancelled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter, a land surveyor, employed by the Winona & St. Peter Railroad Company. On 17th April, 1868, he examined the land, and at that time there was no person residing on it, neither was there any house or other improvements thereon. The land is in its original wild state and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. 326

He was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Affidavits sworn February 10, 1869. Service by publication. No evidence of inability to find entryman.

Pre-emption declaratory statement 21186, Marshall Anderson, June 26, July 1, 1871, cancelled May 9, 1872.

Pre-emption declaratory statement 21388, Henry O. Gilbert, June 26, September 23, 1871, cancelled May 9, 1872. 327

Certified February 28, 1872, for the joint benefit of The Winona & St. Peter Railroad Company and the St. Paul & Sioux City Railroad Company.

110 E. ½ of NW. ¼ sec. 1, town 108, range 32.

P. D. S. 17801, Elias G. Corey, April 4, 8, 1864. Home 1321, Elias G. Corey, May 21, 1864, canceled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter, land surveyor, employed by Winona & St. Peter Railroad Company. On April 17, 1868, he 328 examined the land in contest and at that time there was no person residing on it, neither was there any house or other improvements thereon, except about one acre of breaking. The land is in its original wild state, and its appearance shows no evidence that any person has ever resided upon, or made improvements thereon, except as hereinbefore stated. I was informed by settlers in the vicinity that this land had never been settled upon by any person. I am acquainted with the claimant, Elias G. Corey, and know that he resided in the town of Courtland, Nicollet County, Minnesota, at 329 and for a year or more previous to said 17th day of April, 1868. Corroborated by Orlando P. Brennesholtz. Affidavit sworn to February 10th, 1869. Service by publication. No evidence of inability to find entryman.

Certified February 28, 1872, for joint benefit of W. & St. P. R. R. Co. and St. P. & S. C. R. R. Co.

W. ½ of NW. ¼ sec. 1, T. 108, R. 32.

Home 1060, Walter R. Johnson, March 14th, 1864, cancelled July 9th, 1868, on relinquishment of the party, made August 13th,
330 1867. No evidence of prior abandonment on file.

P. D. S. 2154, Martin Kite, June 26, 26, 1871, cancelled May 9, 1872.

NW. ¼, certified Feb. 28, 1872, for joint benefit of W. & St. P. R. R. Co. and St. P. & S. C. R. R. Co.

111 W. ½ of NE. ¼ sec. 1, T. 108, R. 32.

See filing and entry of Corey, covering E. ½ of NW. ¼ above, and notes relating thereto.

Certified February 28, 1872, joint benefit of W. & St. P. R. R. Co. and St. P. & S. C. R. R. Co.

331 NE. ¼ of NE. ¼ sec. 3, T. 108, R. 32.

Home 1043, Silas Blackman, March 9th, 1864, canceled July 25th, 1868, on following evidence:

Testimony: On complaint of Jno. E. Hackett. Hackett swears he has known land since March, 1868; that Blackman has no house or improvements and does not live on this land. He resides about four miles from this land in another township. Blackman told him he had forfeited his right and should not try to hold it and offered to sell him his right for $18. Corroborated by Owen Morehouse. Evidence taken July 15th, 1868. Notice by publication. No
332 evidence of inability to find entryman.

Certified for St. P. & S. C. R. R. Co., May 14, 1874. Awarded to W. & St. P. R. R. Co. by Supreme Court and deeded by gov. Feb. 16, 1881.

NW. ¼ of NE. ¼ and S. ½ of NE. ¼ sec. 3, T. 108, R. 32.

Home 1329, Amund Christopher, May 24th, 1864, canceled on complaint of John E. Hackett, July 25th, 1868, on following evidence:

Testimony: Hackett swears he has known the land since March,
333 1868. Christopher has no house or improvements and does not live on the land. Contestant has broke about five acres of the land. Christopherson has never lived in the vicinity and is not known by the oldest inhabitants. Corroborated by Jacob
112 Duncan. Evidence taken July 15th, 1868. Notice by publication. No evidence of inability to find entryman.

Certified for St. P. & S. C. May 14, 1874. Awarded to W. & St. P. by Supreme Court and deeded by gov. Feb. 16, 1881.

334 S. ½ of NE. ¼ and E. ½ of NW. ¼ sec. 5, T. 108, R. 32.

Home 1499, Jesse Wiggin, June 24, 1864. Canceled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter, employed by company to examine said land. On April 15th, 1868, he examined it and at that

time there was no person residing on it, neither was there any house or other improvements thereon. The land is in the original wild state and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. He was 335
informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 9th, 1869. Notice by publication. No evidence of inability to find entryman.

Hd. 6331, William Morehouse, June 26th, 1871, canceled April 1, 1872.

Certified for the St. P. & S. C. May 14, 1874. Awarded to W. & St. P. by Supreme Court and deeded by gov. Feb. 16, 1881.

SE. ¼ sec. 21, T. 109, R. 32. 336

Home 789, Chas. N. Wilcox, November 10th, 1863, canceled June 18th, 1869, on following evidence:

Testimony: Theodore G. Carter, employed by the W. &
113 St. P. R. R. Co. to examine land. On April 17, 1868, he examined this land and at that time Wilcox did not reside on it, neither was there any house or other improvements thereon made or claimed by said Wilcox. The land is in its original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. He was informed by 337
settlers in the vicinity that this land had never been settled upon by any person. George Bigglehaupt has recently settled upon and improved said land with a full understanding that he has no right to the land, except such as he may hereafter acquire from the company. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10th, 1869. Notice by publication. No evidence of inability to find entryman.

P. D. S. 21136, Geo. W. Kendall, June 23–26, 1871. Cancelled May 9th, 1872, upon relinquishment.

P. D. S. 21252, Terry Crumlet, July 7th, 1871. Cancelled May 338
4th, 1872.

Certified for the St. P. & S. C., May 14th. 1874. Awarded to the W. &. St. P. by the Supreme Court and deeded by the gov. Feb. 16, 1881.

SW. ¼ of NW. ¼ sec. 27, T. 109, R. 32.

Home 1266, Alonzo Patrick, May 10th, 1864. Cancelled August 4th, 1866, on application of John Franklin and the following evidence:

Testimony: Freeman R. Humphrey, known land two years, live
in about three miles of it. No house or person living on this land. 339
Patrick left the vicinity of the land about two years ago and has never returned; said he was going to return to his former
114 home, but do not recollect where. Before he left he asked witness to buy his claim and said he should abandon it if he couldn't sell it. He never had a house or lived on this land.

He broke about five acres in the spring of 1864 on this land. The land has never been cultivated by him, or any one else. Witness was last on the land on the 3rd day of the present month (July,
340 1866). There has nothing been done on it since the summer of 1864. Patrick then said he should abandon the place on account of his poor health. Corroborated by John Franklin. Testimony taken July 5th, 1868. Notice by publication. Allegation that entryman could not be found.

Certified for the St. Paul & Sioux City May 14, 1874. Awarded to Winona & St. Peter by Supreme Court and deeded by gov. February 16, 1881.

N. ½ of NW. ¼ sec. 27, T. 109, R. 32.

341 Home 1324, Horace Patrick, May 21, 1864, cancelled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter employed by the company to examine this land. On April 17, 1868, he examined the land; at that time no person was residing on it, neither was there any house or other improvements. The land is in its original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. He was informed by settlers in the vicinity that this land had never been settled upon by any person.

342 Corroborated by Orlando P. Brennesholtz. Testimony taken February 10, 1869. Notice by publication. No evidence that entryman could not be found.

NW. ¼. Home 6348, Joseph Bruckbauer, June 21, 1871. Cancelled April 1, 1872.

115 Certified for the St. Paul & Sioux City May 14, 1874. Awarded to Winona & St. Peter by supreme court and deeded by gov. February 16, 1881.

SW. ¼ sec. 27, T. 109, R. 32.

343 Home 1354, Eli G. Merrill, May 26, 1864. Cancelled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter employed by the Winona & St. Peter Railroad Company to examine the land. On April 17, 1868, examined it. At that time there was no person living on it, neither was there any house or other improvements thereon. The land is in its original wild state and its appearance shows no evidence that any person ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon by any person.

344 Corroborated by Orlando P. Brennesholtz. Testimony taken February 11, 1869. Notice by publication. No evidence of inability to find entrymen.

P. D. S. 21145, Jacob Duncan, May 1, June 26, 1871. Cancelled May 9, 1872.

Certified for the St. Paul & Sioux City May 14, 1874. Awarded to Winona & St. Peter by supreme court and deeded by gov. February 16, 1881.

W. ½ of SE. ¼ and E. ½ of SW. ¼ sec. 35, T. 109, R. 32.

Hd. 1320, Daniel Price, May 21, 1864. Cancelled June 18, 1869, on following evidence: 345

P. D. S. 17797, Loduski G. Price, April 4, 1864.

Testimony: Theodore G. Carter examined land April 17, 1868, for company; at that time there was no person resid-
116 ing on it, neither was there any house or other improvements thereon, except about one acre of breaking. The land is in its original wild state and its appearance shows no evidence that any person has ever resided upon or made improvements thereon, except as hereinbefore stated. He was informed by settlers that this land had never been settled upon by any person. 346 Price resides in Courtland, Minnesota. Witness is acquainted with him and knows that he has never removed from his own land in Courtland aforesaid, where he has resided for several years.

Corroborated by Orlando P. Brennesholtz. Testimony taken February 11, 1869. Notice by publication. No evidence of inability to find entryman.

P. D. S. 21144, James M. Kendall, June 26, *26*, 1871.

S. ½ of SW. ¼.

Home 6434, Nathan Tanner, August 5, 1871. Cancelled April 19, 1872. 347

Selected November 25, 1872, and certified October 24, 1873, for Winona & St. Peter. Selected for St. Paul & Sioux City April 9, 1874. Awarded by supreme court to Winona & St. Peter and deeded by governor February 16, 1881.

May 6, 1878, Robert Lent applied to enter the land. Application denied by Commissioner, June 20, 1882. Decision declared final January 4, 1883. A petition for suit to set aside railroad title for benefit of Lent was denied by the Secretary of the Interior September 8, 1884. 348

Lent was allowed by local officers to file D. S. 24503, Sept. 2, 1887, for S. ½ of SW. ¼, NE. ¼ of SW. ¼, and NW. ¼ of SE. ¼, alleging settlement November 25, 1871.

117 W. ½ of NW. ¼ sec. 35, T. 109, R. 32.

Home 1061, Alexander Harrier, March 4, 1864. Cancelled January 5, 1869, on application of John W. Golden and the following evidence:

Testimony: John W. Golden: Harrier has not resided upon and cultivated said land since March 14, 1864, and that he has aban- 349 doned the tract.

Jacob Duncan: Knows land since June, 1866; at that time there was no house or improvements or any person living on this land. Harrier has no house and is not living on it. Golden, the contestant, has about three tons of hay on it: there are no other improvements. Witness has worked for contestant on this land and ad-

joining land several days during last month (June, 1866) and has had occasion to go over it and knows there are no improvements on it.

Corroborated by Samuel Sherman. Testimony taken July 26,
350 1866. Notice by publication. Shown that entryman could not be found.

P. D. S. 21262, Martin Etter, July 1, 11, 1871. Cancelled May 9, 1872.

Homestead application, John Nowack, July 21, 1885, rejected by Commissioner of the General Land Office August 31, 1886. Affirmed by Secretary August 7, 1888. (Case 6-5423.)

Certified May 14, 1874, for St. Paul & Sioux City. Awarded to Winona & St. Peter by Supreme Court and deeded by governor February 16, 1881.

SW. ¼ of SW. ¼ sec. 35, T. 109, R. 32.

Home 1043, Silas Blackman. (See NE. ¼ NE. ¼ 3-108-32.)
118 Home 6434, Nathan Tanner. (See E. ½ SW. ¼, above.)
P. D. S. 24503, Robert Lent. (See W. ½ SE. ¼, above.)

Certified May 14, 1874, for St. P. & S. C. Awarded to the W.
352 & St. P. by the Supreme Court, and deeded by the governor Feb. 16, 1881.

NE. ¼ of sec. 35, T. 109, R. 32.

Home 1089, Adam Windelschafer, March 25, 1864. Cancelled June 18, 1869, on the following evidence:

Testimony: Theodore Carter, examined land for company April 17, 1868; at that time there was no person residing on it, neither was there any house or other improvements thereon. The land is in its original wild state and its appearance shows no evidence that
353 any person has ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that the land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 11, 1869. Notice by publication. No evidence of inability to find entryman.

P. D. S. 21171, T. W. Betka, June 24, July 1, 1871. Cancelled May 9, 1872.

Certified May 14, 1874, for St. P. & S. C. Awarded to W. & St. P. by the Supreme Court and deeded by the governor Febru-
354 ary 16, 1881.

Hd. application, Zavier Seidl, Nov. 6, 1885. Rejected by the Com'r of Genl. Land Office Aug. 3, 1886. Affirmed by Secretary Aug. 7, 1888.

119 SW. ¼ sec. 31, T. 109, R. 32.

Home 1366, John K. Wright, May 27, 1864. Cancelled June 18, 1869, on following evidence:

Tastimony: Theodore G. Carter examined land for company
355 April 15, 1868; at that time there was no person residing on it, neither was there any house or improvements thereon, except a few

furrows of breaking, not to exceed ¼ of an acre on the southwest corner of the land, and a hole dug in the ground with a bark roof over it and filled with snow. Did not look as if it ever had been occupied to live in—was not fit for such a purpose. Corroborated by Orlando P. Brennesholtz. Testimony taken Feb. 11, 1869. Notice by publication. No evidence of inability to find entryman.

Certified for St. P. & S. C. May 14, 1874. Awarded to W. & St. P. by Supreme Court and deeded by Gov. Feb. 16, 1881. 356

Subsequently John K. Wright made final proof of his claim, to wit, June 1, 1869, which was accepted by the district officers, and final certificate No. 808 was issued to him. His proof is that entry was made through his father under act March 21, 1864, he being then in military service; that he, the applicant, was discharged from service in 1865, and he settled on the land August 4, 1865; had built house 10 x 10 feet, 5½ feet high, good bark roof and board floor, one door, and one window, and that he has lived in the house 357 from about August 4, 1865, to time of proof, June 1, 1869, and that he has plowed 1½ acres of land, and has material on place for fencing said 1½ acres. In letter of May 26, 1870, to C. T. 120 Brown, New Ulm, Minn., the Commissioner refuses rehearing in this case. Final entry was cancelled September 10, 1890, by F.

Certified for St. Paul & Sioux City May 14, 1874. Awarded to Winona & St. Peter by Supreme Court and deeded by the governor February 16, 1881.

SE. ¼ of sec. 5, T. 109, R. 33. 358

Home 1261, Alfred M. Jones, May 10, 1864. Cancelled June 18, 1869, on the following evidence:

Testimony: Theodore G. Carter examined land April 16, 1868, for company. No person then residing on it, and no house or other improvement thereon. The land is in its original wild state, and its appearance shows no evidence that any person ever resided upon, or made improvements thereon; was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10, 1869. Notice by publication. No evidence 359 of inability to find entryman.

Home 6337, James M. King, June 26, 1871. Cancelled April 1, 1872.

Certified for W. & St. P. November 24, 1873.

SE. ¼ sec. 3, T. 109, R. 33.

Home 1202, John M. Sisler, April 29, 1864. Cancelled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter examined land for company April 16, 1868. No person then living on it, and no house or 360 other improvement thereon; land in its original wild state, and its appearance shows no evidence that any person has ever resided

upon or made improvements thereon. Was informed by
121 settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10, 1869. Notice by publication. No evidence of inability to find entryman.

P. D. S. 21182, Neil J. McCall, June 27, July 1, 1871. Can-
361 celled May 9, 1872.

Certified November 24, 1873, for W. & St. P. R. R.

SW. ¼ of sec. 3, T. 109, R. 33.

Home 1543, Josiah C. Hemingway, July 27, 1864. Cancelled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter. Examined land for company April 16, 1868. No person then living on it and no house or other improvements thereon. Land is in its original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. Was informed by
362 settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10, 1869. Notice by publication. No evidence of inability to find entryman.

P. D. S. 21159, Jacob Bowers, June 26, July 1, 1871. Cancelled May 9, 1872.

Certified November 24, 1873, for W. St. P. R. R.

NE. ¼ of sec. 9, T. 109, R. 33.

Home 1279, William J. Strawbridge, May 23, 1864. Cancelled June 18, 1869, on following evidence:

363 Testimony: Theodore G. Carter. Examined land for company April 16, 1868. No person then living on it and no house or other improvements thereon. It was in its original wild state, and its appearance shows no evidence that any person has ever
122 resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10, 1869. Notice by
364 publication. No evidence of inability to find entryman.

P. D. S. 21162, Thomas J. Bower, June 26, July 1, 1871. Cancelled May 9, 1872.

P. D. S. 21215, Dorothy Harrison, June 28, July 1, 1871. Cancelled May 9, 1872.

W. ½ of NE. ¼ and E. ½ of NW. ¼, D. S. 21361—George Leibermann, June 16, 1869, September 11, 1871. Canceled May 9, 1872.

Certified November 24, 1873, for the W. & St. P. R. R.

365 NW. ¼ of sec. 9, T. 109, R. 33.

Home 1262, Julius E. Williams, May 10, 1864. Canceled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter. Examined land for company April 15, 1868. No person then residing on it and no house or

improvement thereon. Land is in its original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony 366
taken February 11, 1869. Notice by publication. No evidence of inability to find entryman.

P. D. S. 21160, John Diddle, June 26, July 1, 1871. Canceled May 9, 1872.

123 E. ½ of NW. ¼ D. S. 21361, George Liebermann. (See NE. ¼.)

Certified November 24, 1873, for The W. & St. P. R. R. Co.

W. ½ of SE. ¼ and E. ½ SW. ¼ sec. 9, T. 109, R. 33. 367

Home 1253, James Carrison, May 5, 1864. Canceled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter examined land for company April 16, 1868. No person then living on the land and no house or other improvements thereon. Land in it original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. He was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 11, 1869. Notice by publication. No 368
evidence of inability to find entryman.

W. ½ of SE. ¼ D. S. 21368, Henry Bathmiller, May 28, September 15, 1871. Canceled May 9, 1872.

SW. ¼ of D. S. 21180, A. W. Waterman, June 29, July 1, 1871. Canceled May 9, 1872.

Certified November 24, 1873, W. & St. P. R.

W. ½ of SW. ¼ sec. 9, T. 109, R. 33.

Home 1263, Nathan E. Sherman, May 10, 1864. Canceled September 12, 1868, on application of A. T. McDonald and the following evidence: 369

Testimony: Hiram A. Buck. Resides on the land and has for a year. Sherman has no house or improvements, and does not live on the land. Witness does not know Sherman, nor ever
124 saw him, and he has not lived in the vicinity of the land. Witness settled on the land over a year ago, built a house, and has lived in it with his family for a year. Has about 13 acres broke, and 10 acres in with crops, and has about 25 acres under fence. Corroborated by David Crandall. Testimony taken Aug. 24, 1868. Notice by publication.

No evidence of inability to find entryman. (See D. S. 21180 370
last above.)

Certified Nov. 24, 1873, W. & St. P. R. R.

NE. ¼ sec. 11, T. 109, R. 33.

Home 1148, Ferdinand Shoemaker, April 14, 1864. Canceled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter examined the land for the company April 16, 1868. No person then residing on it, and no house or other improvements thereon. The land was in its original wild
371 state and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon by any person.

Corroborated by Orlando P. Brennesholtz. Testimony taken February 11, 1869.

P. D. S. 21146, George N. Dayton, June 25, 26, 1871. Canceled May 9, 1872.

Certified November 24, 1873, W. &. St. P. R. R.

NW. ¼ sec. 11, T. 109, R. 33.

372 Home 1149, Nils P. Malmberg, April 14, 1864. Canceled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter examined the land for company April 16, 1868. No person then residing on it, and no house
125 or other improvements thereon. The land was in its original wild state and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P.
373 Brennesholtz. Testimony taken February 11, 1869. Notice by publication. No evidence that entryman could not be found.

D. S. 21254, William Schneider, May 10, July 8, 1871. Canceled May 9, 1872.

Certified November 24, 1873, W. & St. P.

W. ½ of SE ¼ sec. 19, T. 109, R. 33.

Home 1223, Jno. E. Schaffer, April 30, 1864. Canceled June 18, 1869, on following evidence:

374 Testimony: Theodore G. Carter examined land for company April 16, 1868. No person living on the land, and no house or other improvements thereon. The land is in its original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land has never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 11, 1869. Notice by publication. No evidence of inability to find entryman.

375 N. ½ of SE. ¼, Hd. 6424, Paul Jones, July 21, 1874. Canceled April 17, 1878. SW. ¼ SE. ¼, approved November 24, 1873, and NW. ¼ SE. ¼, approved June 6, 1879, W. & St. P. R. R.

126 NW. ¼ sec. 19. T. 109, R. 33.

Home 1556, Austin Jacobson, July 11, 1864. Canceled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter examined land for company April 16, 1868. No person then residing on it, and no house or 376
improvements thereon. Land in its orignal wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 11, 1869. Notice by publication. No evidence of inability to find entryman.

D. S. 21184, Angus McRae, May 27, July 1, 1871. Canceled May 9, 1872.

Certified November 24, 1873, to W. & St. P. R. R. 377

W. ½ of NE. ¼ sec. 21, T. 109, R. 33.

Home 1280, Daniel Webster, May 23, 1864. Canceled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter examined land for company April 16, 1868. No person living on it at that time, no house or other improvements on it. Land in its origiual wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. He was informed by settlers in the vicinity that this land has never been settled upon by 378
any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10, 1869. Notice by publication. No evidence of inability to find entryman.

127 D. S. 21177, John Stanley, June 26, July 1, 1871. Canceled May 9, 1872. Approved November 24, 1873, W. & St. P. R. R.

SE. ¼ sec. 25, T. 109, R. 33.

Home 1191, Frank A. West, April 27, 1864. Canceled June 379
18, 1869, on following evidence:

Testimony: Theodore G. Carter examined land for the company, April 10, 1868. No person then living on it. No house or other improvements thereon. Land in its original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. He was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10, 1869. Notice by publication. No evidence of inability to find entryman. 380

6339, John D. Kastner, June 27, 1871. Canceled April 1, 1872.

Certified May 14, 1874, for St. Paul & Sioux City R. R. Co. Awarded to W. & St. P. by Supreme Court and deeded by Gov. February 16, 1881.

SW. ¼ sec. 25, T. 109, R. 33.

Home 1199, Michael Graham, April 28th, 1864. Canceled June 18th, 1869, on following evidence:

Testimony: Theodore G. Carter examined land for company
381 April 15, 1868. No person then residing on it. No house or other improvements thereon. Land in its original wild state, and its appearance shows no evidence that any person has ever resided
128 upon or made improvements thereon. He was informed by settlers in the vicinity that the land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10th, 1869. Notice by publication. No evidence of inability to find entryman. D. S. 21148, Chas. W. Smith, June 26, 26, 1871. Canceled May 9th, 1872.

382 Certified May 14th, 1874, St. P. & S. C. R. R. Co. Awarded to W. & St. P. by Supreme Court. Deeded by Gov. February 16th, 1881.

E. ½ of NE. ¼, sec. 25, T. 109, R. 33.

Home 1300, Hiram W. Lock, May 17th, 1864. Canceled June 7th, 1867, on relinquishment of party dated May 8th, 1867.

P. D. S. 21163, Geo. Ebilsisar, June 26th, July 1st, 1871. Canceled May 9th, 1872.

383 Certified May 14th, 1874, St. P. & S. C. Awarded to W. & St. P. by Supreme Court and deeded by Gov. February 16th, 1881.

NW. ¼, sec. 25, T. 109, R. 33.

Home 1198, Chas. Perry, April 28th, 1864. Canceled June 18th, 1869, on following evidence:

Testimony: Theodore G. Carter examined this land for the company April 15th, 1868. No person then residing on it. No house or other improvements thereon. Land in its original wild state,
384 and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. He was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz.
129 Testimony taken Feb'y 10, 1869. Notice by publication. No evidence of inability to find entryman.

P. D. S. 21165, Walter Garret, June 25, July 1, 1871. Cancelled May 9, 1872.

Certified St. P. & S. C., May 14, 1874. Awarded to W. & St.
385 P. by Sup. Court, deeded by gov. Feb. 16, 1881.

NW. ¼ sec. 29, T. 109, R. 33.

Home 1269, Christian Horrig, May 11th, 1864. Canceled June 18th, 1869, on following evidence:

Testimony: Theodore G. Carter examined this land for the company April 15, 1868. No person then living on it and no house or other improvements thereon. Land in its original wild state and its appearance shows no evidence that any person has ever

resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon 386
by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10th, 1869. Notice by publication. No evidence of inability to find entryman.

Certified March 17, 1877, for W. & St. P. R. R.

SW. ¼ sec. 29, T. 109, R. 33.

Home 1562, Wm. L. Sherman, July 13, 1864. Canceled June 18, 1869, on following testimony:

Testimony: Theodore G. Carter examined this land for the company April 15, 1868. No person then living on it and no house 387
or other improvements thereon. Land is in its original wild state and its appearance shows no evidence that any person has ever resided upon, or made improvements thereon. Was informed
130 by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10, 1869. Notice by publication. No evidence of inability to find entryman. D. S. 21185, Emil Olson, June 15, July 1, 1871. Canceled May 9, 1872. Certified March 17, 1877, W. & St. P. R. R. 388

NE. ¼ sec. 33, T. 109, R. 33.

Home 1422, Elvin Clason, June 8, 1864. Canceled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter, examined this land for the company April 15, 1868. No person living on it and no house or other improvements thereon. Land is in its original wild state and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon 389
by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10, 1869. Notice by publication. No evidence of inability to find entryman.

Certified May 14, 1874, for the St. Paul & Sioux City R. R. Awarded to W. & St. P. by Sup. Court and deeded Feb. 16, 1881, by governor.

W. ½ SE. ¼ sec. 33, T. 109, R. 33.

Home 1427, Wm. Spencer, June 8, 1864. Canceled June 18, 1869, on following evidence:

Testimony: Theodore G. Carter examined this land for the company April 15, 1868. No person then living on it and no house 390
or other improvements thereon. Land is in its original wild state and its appearance shows no evidence that any person has
131 ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 11th, 1869. Notice by publication. No evidence of inability to find entryman.

391 P. D. S. 21211, Wm. Galles, June 28, July 1, 1871. Canceled May 9th, 1872.

Certified May 14, 1874, for the St. P. & S. C. R. R. Awarded to the W. & St. P. by the supreme court and deeded Feb. 16, 1881, by governor.

NE. ¼ sec. 35, T. 109, R. 33.

Home 1352, Alonzo A. Decker, May 25, 1864. Canceled June 18, 1869, on following evidence:

392 Testimony: Theodore G. Carter examined this land for the company April 15, 1868. No person then living on the land. No house or other improvements thereon. Land in its original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. He was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken February 10th, 1869. Notice by publication. No evidence of inability to find entryman.

393 P. D. S. 21209, Wm. Parker, June 27, July 1, 1871. Canceled May 9th, 1872. D. S. 21390, Joseph Savage, June 25, Sept. 26, 1871. Canceled May 9, 1872.

Certified May 14, 1874, for St. P. & S. C. Awarded to W. & St. P. by supreme court and deeded Feb. 16, 1871, by governor.

132 NW. ¼ sec. 35, T. 109, R. 33.

Home 1462, Edward Casey, June 14, 1864. Canceled June 18, 1869, on following evidence:

394 Testimony: Theodore G. Carter examined this land for the company April 15th, 1868. No person then living on the land. No house or other improvements thereon. The land is in its original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. He was informed by settlers in the vicinity that this land had never been resided upon by any person.

Corroborated by Orlando P. Brennesholtz. Testimony taken February 11, 1869. Notice by publication. No evidence of inability to find entryman.

D. S. 21173, Richard Bennett, June 27, July 1, 1871. Canceled May 9, 1872.

395 D. S. 21235, Edson Hall, May 20, July 4, 1871. Canceled May 9, 1872.

Certified May 14, 1874, for the St. P. & S. C. R. R. Awarded to W. & St. P. by supreme court and deeded Feb. 16, 1881, by governor.

W. ½ of NE. ¼ and NW. ¼ of SE. ¼, and lot 3, sec. 31, T. 109, R. 33.

Home 1220, Herman Barrage, April 30, 1864. Canceled Jnue 18, 1869, on following evidence:

396 Testimony: Theodore G. Carter examined this land for the company April 15, 1868. No person was then living on it. No

house or other improvements then thereon. Land is in its original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. Was
133 informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken Feby. 11, 1869. Notice by publication. No evidence of inability to find entryman.

W. ½ NE. ¼, D. S. 21216, Franklin Freidman, June 29, July 1, 1871. Canceled May 9, 1872.

NW. ¼ SE. ¼ and lot 3, D. S. 21231, Savier Roskopf, July 1, 397
3, 1871. Canceled May 9, 1872.

W. ½ and NE. ¼, certified Jan. 19, 1875, for W. & St. P. R. R.

NW. ¼ SE. ¼ and lot 3, certified, St. P. & S. C. Awarded to W. & St. P. by the supreme court, and deeded February 16, 1881, by the governor.

W. ½ of SE. ¼ and E. ½ of SW. ¼ sec. 23, T. 109, R. 34.

Home 1152, John C. Rudolph, April 14, 1864. Canceled June 398
18, 1869, on following evidence:

Testimony: Theodore G. Carter examined land for company April 16, 1868. No person then living on the land. No house or other improvements then thereon. Land is in its original wild state, and its appearance shows no evidence that any person has ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon by any person. Is acquainted with the claimant. He is now, and has been several years past, a resident of New Ulm, Minn. Corroborated by Orlando P. Brennesholtz. Testimony taken Feb- 399
ruary 11, 1869. Notice by publication. Personal service might have been made.

D. S. 21213, Jacob Dillman, June 29, July 1, 1871. Canceled May 9, 1872.

134 Certified Nov. 24, 1873, W. & St. P.

NE. ¼ sec. 21, T. 109, R. 35.

Home 1532, Chas. Miller, July 4, 1864. Canceled Dec. 17, 1873, because of failure, after due notice, to make final proof within statutory period.

Certified June 6, 1879, for W. & St. P. R. R. 400

SE. ¼ sec. 21, T. 109, R. 35.

Home 1533, Michael Blaeser, July 4, 1864. Canceled Dec. 17, 1873, because of failure, after due notice, to make final proof within statutory period.

Certified June 6, 1879, for W. & St. P. R. R.

SE. ¼ sec. 5, T. 108, R. 35.

Home 981, Peter H. McDermid, Feby. 27, 1864. Canceled May 7, 1869, on relinquishment of party, made February 12, 1869.

Certified Nov. 24, 1873, W. & St. P. 401

SE. ¼ sec. 21, T. 109, R. 36.

Home 1015, Julius F. Kirschstein, Mch. 7, 1864. Canceled Feby. 3, 1873, on relinquishment made September 26, 1872.
Certified June 7, 1873, W. & St. P.

NE. ¼ sec. 27, T. 109, R. 36.

Home 1012, John Doster, March 7, 1864. Canceled for relinquishment Feby. 3, 1873. Relinquished in 1872.
Certified June 7, 1873, W. & St. P.

402 NW. ¼ sec. 27, T. 109, R. 36.

Home 1011, Lorenzo Amann, Mch. 7, 1864. Canceled February 3, 1873, on relinquishment of party made Sept. 27, 1872.
Certified June 7, 1873, W. & St. P.

135 SE. ¼ sec. 27, T. 109, R. 36.

Home 1010, John Stamm, March 7, 1864. Canceled February 3, 1873, on relinquishment of party made in 1872.
Certified June 7, 1873, W. & St. P.

403 SW. ¼ sec. 27, T. 109, R. 36.

Home 1014, John Victor, Mch. 7, 1864. Canceled Feb. 3, 1873, on relinquishment of party.
Certified June 7, 1873, W. & St. P.

NE. ¼ sec. 29, T. 109, R. 36.

Home 1026, August Quense, March 8, 1864. Canceled Feby. 3, 1874, on relinquishment of party, made Sept. 26, 1872. (Case 3–2409.) Feb. 3, 1880, Commissioner of General Land Office rejected the application of John Lind to enter this tract under the
404 timber-culture law. Lind appealed from the decision, basing his right of entry on the ground that the prior hd. entry excepted this tract from the grant to the W. & St. P. R. R. Co. Decision of the Commissioner affirmed by the Secretary of the Interior Aug. 11, 1880.
Certified June 7, 1873, for W. & St. P. R. R.

NW. ¼ sec. 35, T. 109, R. 36.

Home 1008, Richard Fischer, May 7, 1864. Canceled Feb. 3, 1873, on relinquishment made Sept. 27, 1872.
405 D. S. 17753, John Cheadle, Feb. 24–25, 1864. Not canceled.
D. S. 21223, Johan Mardus, Aug. 1–22, 1871. Canceled Dec. 1, 1874.
Certified June 7, 1873, for W. & St. P. R. R.

136 SW. ¼ sec. 35, T. 109, R. 36.

Home 1019, Jacob F. Barbier, March 7, 1864. Canceled Feb. 3, 1873, on relinquishment made Sept. 26, 1872.
Certified June 7, 1877, W. & St. P.

NE. ¼ sec. 25, T. 108, R. 38. 406

Home 1168, Joseph Berg, April 23, 1864. Canceled December 17, 1873, for failure, after due notice, to make proof within statutory period.
Certified May 14, 1874, for St. P. & S. C. R. R. Co. Awarded by Supreme Court to W. & St. P. and deeded by governor Feb. 16, 1881.

W. ½ SE. ¼ sec. 25, T. 108, R. 38.

D. S. 17537, Chas. Zirke, June 1–18, 1861. Not canceled. In contest with next claimant, it is shown that Zirke abandoned the 407
land in August, 1862.
D. S. 22052, Fritzoff Rees, July 8–9, 1872. Canceled on decision of Secretary of the Interior, dated Sept. 2, 1872, awarding said land to W. & St. P. R. R. Co.
D. S. 22075, Marlowe Mason, June 10, July 8, 1872. Not canceled.
Certified June 7, 1873, W. & St. P.

S. ½ NE. ¼ and S. ½ NW. ¼ sec. 5, T. 108, R. 33.

Home 1238, Chas. Hilleman, May 3, 1864. Canceled June 18, 408
1869, on following evidence:
Testimony: Theodore G. Carter examined the land for company April 15, 1868. No person then living on the land. No house or other improvements thereon. Land is in its original wild
137 state and its appearance shows no evidence that any person ever resided upon or made improvements thereon. Was informed by settlers in the vicinity that this land had never been settled upon by any person. Corroborated by Orlando P. Brennesholtz. Testimony taken Feby. 11, 1869. Notice by publication. No evidence of inability to find entryman. 409
Certified May 14, 1874, to St. P. & S. C. Awarded to W. & St. P. by Sup. Court and deeded by governor, Feb. 16, 1881.

SW. ¼ sec. 29, T. 110, R. 27.

D. S. 12788, Timothy T. White, March 1, May 26, 1857, not canceled.
May 31, 1876, Thos. McQuatt applied to enter said tract, alleging settlement July 5, 1868. The honorable Secretary, on March 29, 1879, in case of McQuatt vs. W. & St. P. R. R. Co., declined to initiate proceedings to set aside the title of said company. 410

NW. ¼ sec. 29, T. 110, R. 27.

D. S. 14934, Matthew Ewing, June 9, July 27, 1857, not canceled.

March 18, 1885, Thos. McQuatt applied to enter tract as a homestead. Rejected by Commissioner of Genl. Land Office, and now standing on appeal to the Secretary of the Interior.

138 EXHIBIT X.

Listings and selections of land made on account of the Winona and St. Peter Railroad grant prior to and during the year 1876, upon which final action had not been taken March 3, 1887, with the present status of the tracts.

412 PRIMARY OR GRANTED LIMITS.

W. ½ SW. ¼, 5, 108, 32.

April 5, 1886, Commissioner holds land excepted from grant. Appealed to Secretary of Interior, and cases transmitted August 10, 1886.

SE. ¼, 31, 109, 32.

April 5, 1886, Commissioner holds lands excepted from grant. Appealed to Secretary of Interior and case sent up from August 10, 1886.

413 SE. ¼ 21, 109, 33. E. ½ SE. ¼, 27, 109, 33. E. ½ SW. ¼, W. ½ SE. ¼, 27, 109, 33.

June 10, 1887, Commr. decided against the company. Filed appeal to Secretary July 26, 1887.

SW. ¼ 5, 108, 35.

Home 983, Henry Patsche, March 1, 1864. Canc. Dec. 17, 1873, expired. Timber-culture entry 1852, Carl Albert Hagberg—canceled Jan. 10, 1887, relinquished. Home 11668, Fridrik Sydow, Jan. 10, 1887, final certificate 6962 July 1, 1892. Railroad listing held for cancellation Jany. 12, 1893.

414 SW. ¼ 25, 109, 35.

Listed by company, July 16, 1885, susp'd. for old claims as follows: D. S., Henry D. Tenny, Feb. 26, 27, 1864. D. S., Michael White, July 13–15, 1871.

139 NE. ¼, 19, 109, 36.

Homestead 1081, canceled Dec. 17, 1873 (expired). Eugene L. Hempel, March 22, 1864. Homestead 12074, Calista Bennett,

Feb. 23, 1891. Canc. May 30, 1891. (Relinquished.) Homestead 12124—Charley Roth, May 30, 1891. (Intact.) Case 4—3115—Closed against company, Feb. 16, 1891. 415

S. ½ SW. ¼, 19, 109, 36.

D. S. 16974—Peter Zeno—Dec. 15, 1857, Feb. 9, 1859. Hd. 11653—Ferdinand L. Behnke, Oct. 13, 1886. Final 6850, Dec. 2, 1891. Case 4—3118—Closed in favor of company, June 29, 1888.

Lot 1, 19, 107, 38.

Selected May 23, 1872. In 15-mile limits of St. P. & S. C. 416

NE. ¼, 7, 108, 32.

Claims of company rejected by Commissioner April 5, 1886. Appealed to Secretary of the Interior.

S. ½ SE. ¼, 7, 109, 32.

April 5, 1886, Commissioner decided land excepted from grant. Appealed to Secretary of Interior.

W. ½ SE. ¼, E. ½ SW. ¼, 17, 109, 34.

April 5, 1886, Commissioner decided land excepted from grant. Appealed to Secretary of the Interior. 417

N. ½ NE. ¼, SW. ¼, NE. ¼, 27, 109, 33.

March 15, 1887, Commissioner decided land to be excepted from grant. Appealed to Secretary of Interior.

140 Lot 2, 31, 111, 31.

Application of company to list said tract rejected by local officers because of supposed cash application Mar. 10, 1886, of Louis Buchard, June 29, 1887, filed appeal to Commissioner.

SECONDARY OR INDEMNITY LIMITS. 418

Lot 5, 9, 107, 42.

Hd. 1173—Cyrus S. Bowman, April 23, 1864. Canceled July 20, 1866. D. S. 18778—Bartlett M. Lowe, July 16, Aug. 4, 1864. Wt. 105745—1855—160 acres—Bartlett M. Lowe, June 25, 1867.

NE. ¼, NW. ¼, 9, 108, 42.

Selected May 23, 1872. Suspended because supposed to be approved as swamp—caused by error in tract book; the NE. ¼ NE. ¼ was approved as swamp July 26, 1887, to Commissioner asking him to approve land to company. 419

NW. ¼ SE. ¼, 11, 113, 41.

Selected May 23, 1872. Suspended because supposed to have been approved as swamp—caused by error in records—the SW. ¼ SE. ¼ was approved as swamp, July 18, 1887, to Commissioner asking approval of tract to company.

420 SELECTIONS UNDER ACT JUNE 22, 1874.

SE. ¼ NE. ¼, 6, 110, 39, in lieu of SE. ¼ NW. ¼, 3, 104, 24. S. ½ SE. ¼, 12, 110, 39, in lieu of SW. ¼ NW. ¼, NW. ¼ SW. ¼, 5, 109, 44. E. ½ NW. ¼, S. ½ NE. ¼, 30, 111, 37. In lieu of N. ½ NE. ¼, E. ½ NW. ¼, 13, 111, 28. In contest with Americus W. Wilcox and F. L. Warner. Commissioner decided against company. Appealed to Secretary of Interior.

421 E. ½ SE. ¼, 2, 108, 37.

Selected Aug. 7, 1876. Canceled Sept. 12, 1890. Subsequent selection, on same basis, approved June 6, 1879. Hd. 11178—Elling Ellington, Apr. 13, 1882. Final certificate 6094, Dec. 21, 1888.

E. ½ NW. ¼, 18, 112, 42.

E. ½ NW. ¼, 18 and N. ½ NE. ¼, 30. Selected July 31, 1876, in lieu of SW. ¼, 23, 111, 42. Approved as to N. ½ NE. ¼, 30, March 17, 1877.

SE. ¼ SE. ¼, 18, 105, 21.

Selected Aug. 9, 1876. Canceled March 12, 1892. Subsequent
422 lieu selection of SE. ¼ NE. ¼, 6, 110, 39, on same basis. Canceled March 12, 1892.

EXHIBIT XI.

This is to certify that the Winona and St. Peter Railroad Company does hereby release and relinquish to the United States of America the following-described lands, all lying west of the fifth principal meridian, to wit:

423

Subdivision.	Section.	Township.	Range.	Area.	
				Acres.	100ths.
SE. ¼ of NE. ¼	11	105	9	40	.....
SE. ¼ of SE. ¼	13	105	9	40	.....
NE. ¼ of NE. ¼	11	105	11	40	.....
424 142 E. ½ of NE. ¼, NW. ¼ of NE. ¼, and NE. ¼ of SE. ¼	25	107	11	160	.....
SW. ¼	27	107	11	160	.....
E. ½ of NE. ¼	23	108	11	80	.....
SW. ¼ NE. ¼ and NW. ¼ of SE. ¼	27	107	12	80	.....
NW. ¼ of SW. ¼	15	106	14	40	.....
NW. ¼	11	107	14	160	.....
SW. ¼ of NE. ¼ and NW. ¼ of SE. ¼	27	106	16	80	.....
NE. ¼	23	106	17	160	.....
Und. ½ of W. ½ of NW. ¼	19	106	18	38	92
Und. ½ of SE. ¼ of NW. ¼	17	107	20	20	.....
Und. ¼ of N. ½ of SW. ¼	23	106	22	40	.....

Subdivision.	Section.	Township.	Range.	Area. Acres.	Area. 100ths.
NE. ¼ of NE. ¼	19	108	22	40	.....
NW. ¼ of NE. ¼	27	107	23	40	.....
SW. ¼ of NW. ¼	19	108	23	35	08
SE. ¼ of SW. ¼	25	109	24	40	.....
Lot 6	33	109	25	57	.....
Lot 1 and SW. ¼ of NE. ¼	19	110	25	39	99
Und. ½ of NE. ¼	29	110	25	80	.....
Und. ½ of S. ½ of NE. ¼	15	109	26	40	.....
Und. ½ of NE. ¼ of SE. ¼	7	110	26	20	.....
Und. ½ of E. ½ of NW. ¼ and SW. ¼ of NW. ¼	7	111	27	57	94
Und. ½ of NW. ¼ of NW. ¼	7	111	27	17	91
Und. ½ of S. ½ of NE. ¼ and N. ½ of SE. ¼	13	111	28	80	.....
NE. ¼ of NW. ¼	19	109	29	40	.....
E. ½ of NE. ¼ and NW. ¼ of NE. ¼	21	109	29	120	.....
143 S. ½ of SW. ¼	11	110	29	80	.....
Lot 4	17	110	29	58	60
SW. ¼	21	110	29	160	.....
Lot 1	3	109	30	1	64
SE. ¼	7	109	30	160	.....
N. ½	9	109	30	320	.....
N. ½ and SE. ¼	17	109	30	480	.....
N. ½ of NW. ¼ and S. ½ of SE. ¼	21	109	30	160	.....
E. ½ of NW. ¼	29	109	30	80	.....
Lot 1	21	110	30	2	50
E. ½ of SE. ¼, SW. ¼ of SE. ¼, and SE. ¼ of SW. ¼	35	110	30	160	.....
SW. ¼ of SE. ¼	31	111	30	40	.....
Lots 4, 12, 13, 14 and 15	19	111	31	206	94
NW. ¼	21	111	31	160	.....
W. ½ and S. ½ of SE ¼	27	111	31	400	.....
S. ½ of NE. ¼, N. ½ of SE. ¼, and S. ½ of SW. ¼	29	111	31	240	.....
SE. ¼ and lots 3, 4, 13, 14, 19, and 20	31	111	31	382	25
Lots 1, 7, and 8	33	111	31	128	27
NW. ¼	35	111	31	160	.....
SW. ¼ of SE. ¼	35	108	40	40	.....

Total, 5,267.04 acres.

425 426 427 428 429

In witness whereof the said Winona and St. Peter Railroad Company has hereunto caused its corporate seal to be affixed and these presents to be signed by its president and attested by
144 its secretary, this fifth day of February, A. D. one thousand eight hundred and ninety.

WINONA & ST. PETER RAILROAD COMPANY,
[SEAL.] By MARVIN HUGHITT, *President.*

Attest:

J. B. REDFIELD, *Secretary.*

Approved:

C. E. SIMMONS, *Land Commissioner.* 430

In presence of:

STATE OF ILLINOIS,
Cook County, ss:

On this fifth day of February, A. D. 1890, before me appeared Marvin Hughitt, to me personally known, who, being by me duly sworn, did say that he is the president of the Winona and St. Peter Railroad Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said Marvin Hughitt 431 acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and seal of office the day and year last above written.

[SEAL.] FRANK P. CRANDON,

Commissioner in and for the State of Illinois, appointed by the governor of the State of Minnesota, to take the acknowledgment of deeds and other instruments in writing to be used in said State of Minnesota.

STATE OF ILLINOIS,
Cook County, ss:

Charles E. Simmons, being duly sworn, deposes and says that he is the land commissioner of the Winona and St. Peter Railroad Company; that as such land commissioner he is the custodian of the records and files of said railroad company relating to the ownership of the lands granted by the United States to the State of Minnesota to aid in the construction of said railroad; that he has carefully examined the records of said railroad company so in his custody as aforesaid, and that it appears from said records that the said Winona and St. Peter Railroad Company has never sold or otherwise disposed of any of the tracts of land described in the attached deed or release from the said railroad company to the United States of America, bearing date the fifth day of February, 1890, except by the aforesaid release.

CHARLES E. SIMMONS,
Land Commissioner Winona and St. Peter Railroad Company.

Subscribed and sworn to before me, a notary public in and for said Cook County and State of Illinois, this 12th day of May, 1890.
[SEAL.] J. F. CLEVELAND,
Notary Public.

Winona and St. Peter Railroad Company.

At a meeting of the directors of the Winona and St. Peter Railroad Company, held in Chicago, Illinois, February 7, 1890, at which a quorum of the directors was present, a resolution was unanimously adopted, as follows, to wit:

Resolved, That the president be, and he is hereby authorized to execute, under the seal of the company, and deliver to the United States, a relinquishment of the following described lands, to wit:

Subdivision.	Section.	Township.	Range.	Area.	
				Acres.	100ths.
SE. ¼ of NE. ¼	11	105	9	40	.....
SE. ¼ of SE. ¼	13	105	9	40	.....
NE. ¼ of NE. ¼	11	105	11	40	.....
E. ½ of NE. ¼, NW. ¼ of NE. ¼, and NE. ¼ of SE. ¼	25	107	11	160	.....
SW. ¼	27	107	11	160	.....
E. ½ of NE. ¼	23	108	11	80	.....
SW. ¼ of NE. ¼ and NW. ¼ of SE. ¼	27	107	12	80	.....
NW. ¼ of SW. ¼	15	106	14	40	.....
NW. ¼	11	107	14	160	.....
SW. ¼ of NE. ¼ and NW. ¼ of SE. ¼	27	106	16	80	.....
NE. ¼	23	106	17	160	.....
Und. ½ W. ½ of NW. ¼	19	106	18	38	92
Und. ½ SE. ¼ of NW. ¼	17	107	20	20	.....
Und. ½ N. ½ of SW. ¼	23	106	22	40	.....
NE. ¼ of NE. ¼	19	108	22	40	.....
NW. ¼ of NE. ¼	27	107	23	40	.....
SW. ¼ of NW. ¼	19	108	23	35	08

Subdivision.	Section.	Township.	Range.	Area. Acres.	Area. 100ths.
SE. ¼ of SW. ¼	25	109	24	40	.....
Lot 6	33	109	25	57	.....
Lot 1 and SW. ¼ of NE. ¼	19	110	25	39	99
Und. ½ NE. ¼	29	110	25	80	.....
Und. ½ S. ½ of NE. ¼	15	109	26	40	.....
Und. ½ NE. ¼ of SE. ¼	7	110	26	20	.....
Und. ½ E. ½ of NW. ¼ and SW. ¼ of NW. ¼	7	111	27	57	94
Und. ½ NW. ¼ of NW. ¼	7	111	27	17	91
SW. ¼	29	106	28	160	.....
147 Und. ½ S. ½ of NE. ¼ and N. ½ of SE. ¼	13	111	28	80	.....
NE. ¼ of NW. ¼	19	109	29	40	.....
E. ½ of NE. ¼ and NW. ¼ of NE. ¼	21	109	29	120	.....
S. ½ of SW. ¼	11	110	29	80	.....
Lot 4	17	110	29	58	60
SW. ¼	21	110	29	160	.....
Lot 1	3	109	30	1	64
SE. ¼	7	109	30	160	.....
N. ½	9	109	30	320	.....
N. ½ and SE. ¼	17	109	30	480	.....
N. ½ of NW. ¼ and S. ½ of SE. ¼	21	109	30	160	.....
E. ½ of NW. ¼	29	109	30	80	.....
Lot 1	21	110	30	2	50
E. ½ of SE. ¼, SW. ¼ of SE. ¼, and SE. ¼ of SW. ¼	35	110	30	160	.....
SW. ¼ of SE. ¼	31	111	30	40	.....
Lots 4, 12, 13, 14, and 15	19	111	31	206	94
NW. ¼	21	111	31	160	.....
W. ½ and S. ½ of SE. ¼	27	111	31	400	.....
S. ½ of NE. ¼, N. ½ of SE. ¼, and S. ½ of SW. ¼	29	111	31	240	.....
SE. ¼ and lots 3, 4, 13, 14, 19, and 20	31	111	31	382	25
Lots 1, 7, and 8	33	111	31	128	27
NW. ¼	35	111	31	160	.....
SW. ¼ of SE. ¼	35	108	40	40	.....

438 439 440 441

Total, 5,427.04 acres.

I, J. B. Redfield, secretary of the Winona and St. Peter
148 Railroad Company, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by the board of directors of the Winona and St. Peter Railroad Company, as stated above.

Witness my hand and the corporate seal of said company, this 7th day of February, 1890.

[SEAL.] J. B. REDFIELD, *Secretary.*

442

EXHIBIT XII a.

FEBRUARY 26, 1890.

Hon. LEWIS A. GROFF,
Commissioner of the General Land Office.

SIR: Referring to the return heretofore filed by us in behalf of the Winona & St. Peter Railroad Company on the rule to show cause why a certain adjustment made by you is not satisfactory, we enclose herewith quitclaim deed from said company to the United States of 5,427.04 acres of land, which are more particularly dis- 443
cussed therein. This quitclaim deed was inadvertently omitted from our return of February 20, last.

Very respectfully,

BRITTON & GRAY,
Attys. W. & St. P. R. R.

EXHIBIT XII b.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
444 *Washington, D. C., March 21, 1890.*

Messrs. BRITTON & GRAY,
Attys. W. & St. P. R. R. Co.

GENTLEMEN: Referring to your letter of February 26, 1890, in the matter of the adjustment of the grant for the Winona
149 &St. Peter R. R. Co., enclosing a quitclaim deed from said company to the United States of 5,424.04 acres, and requesting that credit be given for same in the adjustment, I have to advise you that there is no evidence to show that the company had not parted with its title prior to the execution of said quitclaim deed.
445 Such evidence will be necessary before credit can be given.

The SW. ¼ of section 29, township 106 north, range 28 west, for 160 acres, is included in said release.

This tract is not within the limits of the grant for said company; further, it is shown to have been approved to the State August 26, 1864, on account of the grant for the Southern Minnesota Railroad.

Very respectfully,

LEWIS A. GROFF, *Commissioner.*

446 EXHIBIT XIIc.

MAY 20, 1890.

Hon. COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Referring to office letter "F" of 8th inst., we return herewith relinquishment by the Winona & St. Peter Railroad Company of 5,267.04 acres of land therein more specifically described, in favor of the United States, and have attached thereto the required affidavit of non-alienation.

We respectfully request that in the adjustment of said company's
447 grant, due credit be given for this land relinquished, and that receipt of this letter may be acknowledged.

Very respectfully,

BRITTON & GRAY,
Att'ys W. & St. P. R. R. Co.

150 *Agreement.*

448 Memorandum of an agreement, made the 31st day of October, one thousand eight hundred and sixty-seven, by and between Danford N. Barney, Jessie Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, Charles F. Latham, Ashbel H. Barney, Samuel N. Hoyt, and Alfred M. Hoyt, parties of the first part, and the Winona & St. Peter Railroad Company, party of the second part:

Whereas the said parties of the first part have, at and upon the request of the said party of the second part, loaned and advanced

large sums of money to the party of the second part, and made, constructed, and equipped one hundred and five miles of the rail- 449
road of the said party of the second part in the State of Minnesota, and the said party of the second part is indebted to the said parties of the first part in a large sum of money on account thereof;

And whereas the said parties have agreed upon the terms of liquidation, settlement, and payment of all such indebtedness, and the adjustment of the matters between them on the terms hereinafter stated;

And whereas the said party of the second part hath heretofore issued and delivered to the said parties of the first part its first mort- 450
gage bonds on said road for two millions one hundred thousand dollars, in part payment of such indebtedness:

Now the said party of the second part hath agreed, and
151 doth hereby agree, in further part payment and satisfaction of such indebtedness, to issue to the said parties of the first part four hundred thousand dollars of the full paid capital stock of its said company, and will also make, execute, and deliver to the said parties of the first part twelve hundred and sixty bonds or obligations of the said party of the second part, which said twelve 451
hundred and sixty bonds shall bear date respectively on the first day of November, one thousand eight hundred and sixty-seven, and be for one thousand dollars each, payable in forty years from said date, and bear interest at the rate of seven per centum per annum, payable semi-annually in the city of New York; and that the said twelve hundred and sixty bonds, to be issued as aforesaid, shall be part of a series of eighteen hundred bonds of one thousand dollars each, all of which shall bear interest and be payable as aforesaid, and all of which shall be equally secured by a deed of trust or 452
mortgage, to be executed by the said Winona & St. Peter Railroad Company to Samuel J. Tilden, as trustee, conveying the railroad of the said last named company from Winona westwardly to the Minnesota River, a distance of one hundred and fifty miles, more or less, as such railroad has been or shall hereafter be constructed, together with the equipments and appurtenances thereof, subject only to the prior lien of a certain other deed of trust or mortgage heretofore executed by said Winona & St. Peter Railroad Company to H. N. Stockwell and Jesse Hoyt, trustees, to secure the payment of first mortgage bonds of said last named company, issued and to be 453
issued to the aggregate amount of three millions of dollars. And it is

hereby expressly provided that the bonds herein agreed to
152 be issued as aforesaid shall be issued only at the rate of twelve thousand dollars per mile of the portion of the Winona & St. Peter Railroad constructed at the time of issuing the same, the distance now constructed, and in respect to which the said twelve hundred and sixty bonds sold or agreed to be sold as aforesaid, shall be issued, being one hundred and five (105) miles. 454
And it being understood and agreed that the remaining five hundred and forty bonds shall be issued only from time to time as the work of constructing said railroad shall progress, at such times and in such manner that the aggregate amount of bonds of the series of

eighteen hundred bonds aforesaid, which shall be at any time outstanding, shall not exceed the proportion of twelve thousand dollars per mile of such series of bonds for each mile of the said Winona & St. Peter Railroad which shall be at such time constructed.

455 And whereas the said party of the second part is, or claims to be, entitled to have and receive, under the several acts of Congress passed in aid of the construction of the said railroad, a certain number of acres of land, supposed to be about six hundred thousand acres, for constructing the portion of said road now constructed, to wit, one hundred and five miles of railroad.

Now, for the residue of the said indebtedness of the said party of the second part to the said parties of the first part, the said party of the second part hath agreed to sell and convey to the said
456 parties of the first part as many acres of land heretofore granted by Congress to the State of Minnesota as the said party of the second part shall receive from the said State by reason of the construction of the portion of The Winona and St. Peter Rail-
153 road heretofore constructed, to wit, one hundred and five miles thereof, extending westwardly from Winona, excepting and reserving, nevertheless, any and all parts and parcels of such lands (if any such there be) which may be necessary for the track of said railroad, or the right of way, or any depot or depot
457 grounds thereof, or any other purpose incidental to the operation of the said railroad constructed or to be constructed, or any part thereof; which said lands hereinbefore agreed to be sold shall be conveyed to the said parties of the first part, or as they shall in writing direct, whenever and as soon as the said party of the second part shall obtain the title thereto under such acts of Congress. The lands to be conveyed as aforesaid shall be selected as follows:

Beginning at Winona aforesaid, and from thence proceeding on each side of the said railroad on a course running parallel there-
458 with, and embracing each of the six, ten, fifteen, and twenty mile limits of the Congressional land grants, and in proceeding, taking all lands within each and all of said limits which shall be received by the said company under said acts of Congress or either of them; it being understood that on each side of said railroad an uniform line of advance westwardly, embracing all the lands in said limits, shall be maintained as nearly as may be until as many acres shall have been selected and taken as the said company shall have received for the construction of the portion of said railroad
459 now completed, which is estimated to be one hundred and five miles thereof, extending northerly and westerly from Winona aforesaid; it being understood that the said parties of the first part shall receive as many acres as shall be received by the party
154 of the second part for the construction of said one hundred and five miles, or so much thereof as is now constructed, notwithstanding that under the acts of Congress the said lands are certified only upon the completion of sections of not less than ten miles of railroad, but reserving, excepting, and deducting from the
460 said number of acres all lands necessary for the track of said rail-

road, or the right of way, or depots, or depot grounds, or other purposes incidental to the operation of said railroad.

And the said party of the second part agrees to acquire the title of said lands as fast as it may be permitted to do under said acts of Congress, and to release and convey to the said parties of the first part, or to such person or persons, in such manner, and from time to time, as may be devised by the said parties of the first part, or their counsel, on the request of the said parties of the first part, or a majority of them, and will do any and every other act and 461
thing necessary and proper to secure the said parties of the first part said lands and every part and parcel thereof, and the proceeds thereof, if it shall be hereafter determined that the same shall be sold by the said party of the second part for the benefit of the said parties of the first part; and until the final arrangements shall be made in reference thereto, the title shall be held by the said party of the second part; and as some time is necessary to enable said parties of the first part to confer and agree upon the details in relation to the holding of the title and the mode of disposing of 462
said lands, this clause is inserted to express the agreement of said parties in relation thereto.

And it is further agreed by and between the parties hereto
155 that the said parties of the first part shall have and take all the cash assets of the said party of the second part up to the first day of November, 1867, and that the said parties of the first part shall assume and *and* agree to pay, and that they shall fully pay and discharge, all the floating debts of the said party of the second part up to the said first day of November, 1867, and 463
all liabilities thereof to that date, except bonded debt, and including the interest to the said first day of November, 1867, which shall have accrued upon the outstanding bonds of the party of the second part, and which will amount at said date to the sum of forty-nine thousand dollars.

And the said parties of the first part hereby covenant, promise, and agree, t and with the said party of the second part, that the said parties of the first part shall and will receive and accept the property and things hereinbefore agreed to be transferred to them in full payment, satisfaction, and discharge of all indebtedness of 464
the said party of the second part to the said parties of the first part, or either of them.

And it is hereby further declared and agreed that it shall be optional with the said party of the second part whether or not the said party of the second part shall construct the said railroad to any point beyond that to which it is now completed; but if the said party of the second part shall not, on or before the first day of February, 1869, resolve to undertake the construction of said railroad to the first crossing of the Minnesota River, at or near Mankato, a 465
distance of about twenty-four miles, and notify the said parties of the first part or some of them that it will undertake such construction, the said parties of the first part shall then, to wit, from
156 and after the said first day of February, 1869, become entitled and be suffered and permitted, at their own election,

to undertake the construction of said road to the said first crossing at or near Mankato aforesaid, and to complete the same within fif-
466 teen months from the said first day of February, 1869, at the proper cost and expense of the parties of the first part, but for the use and benefit of the party of the second part, upon the terms following, that is to say: The said party of the second part electing not to construct said railroad to the said first crossing, at or near Mankato aforesaid, and the said parties of the first part, within fifteen months from the said first day of February, 1869, undertaking such construction as aforesaid, the said party of the second part shall issue and deliver to the said parties of the first part, from time to time, as the work of construction shall progress, the first-mortgage bonds
467 aforesaid, at the rate of twenty thousand dollars in amount thereof, and the sinking-fund bonds aforesaid at the rate of twelve thousand dollars in amount thereof, for each mile of the said railroad which shall be constructed by the said parties of the first part as aforesaid, in addition to the one hundred and five miles now completed, until the said railroad shall be completed to the first crossing aforesaid; and upon the completion thereof by the party of the first part to the first crossing aforesaid, provided the same shall be so completed by the first day of May, one thousand eight hundred and seventy,
468 said parties of the first part shall become entitled to receive from the party of the second part the same number of acres of land which the said party of the second part shall receive under the said acts of Congress for the construction of said railroad from the
157 point to which it is now completed to the said first crossing, except such lands as shall be required for railroad purposes, as hereinbefore provided in regard to the one hundred and five miles now constructed, which lands to be conveyed as aforesaid to the parties of the first part, upon the completion of said road by
469 them to the said first crossing, shall be selected in the same manner as hereinbefore provided in respect to the lands hereinbefore agreed to be conveyed to the parties of the first part, or for their benefit, for the construction of said one hundred and five miles; and all the provisions hereof, in respect to the lands which may be received for the construction of the said one hundred and five miles, shall apply to the lands which may be received for the construction of said additional twenty-four miles; provided, always, that the said parties of the first part, undertaking the construction of said twenty-
470 four miles, shall construct, complete, and equip the same in such a manner that the condition thereof, upon the average, shall be in all respects equal, including equipment, to the average condition of the one hundred and five miles heretofore constructed, with the exception only that the said parties of the first part shall not be obliged to erect elevators thereon.

And provided further, that the said parties of the first part, undertaking the construction of said railroad beyond the point to which it is now completed, and receiving therefor the bonds afore-
471 said, shall indemnify and save harmless the party of the second part from all costs, charges, expenses, damages, and liabilities of such construction.

And it is hereby further declared and agreed that either
158 party hereto, undertaking the construction of said railroad
to the first crossing aforesaid, shall complete the same by
the first day of May, one thousand eight hundred and seventy.

And it is hereby further declared and agreed that if the said parties of the first part shall build the said extension of the said railroad 472
to the said first crossing as aforesaid, pursuant to this agreement, the said party of the second part shall allow them to use the tracks of the constructed portions of said railroad to transport, free of charge and by the proper motive power, locomotives, cars, and other rolling stock, and the proper agents, employés and servants of the parties of the first part, and at their expense, all materials used in such construction, and all workmen employed in making the same, under and subject to such reasonable rules and regulations in respect to running trains over the said railroad, or any part thereof, as shall be from time to time prescribed by the said party of the second 473
part, or the proper officer or officers thereof. And provided further, that such use of said track shall not impede or interfere with the ordinary business of said railroad; and that the said parties of the first part shall indemnify and save harmless the party of the second part from and against all loss and damage from any cause arising out of the use of said track by the said parties of the first part as aforesaid.

And it is hereby further declared and agreed that after the completion of the said railroad to the first crossing aforesaid, it shall be 474
optional with the party of the second part whether it shall construct the said railroad from the said first crossing to the second crossing of
the Minnesota River, being about twenty-eight miles, more
159 or less (including the bridge over the first crossing); but if the
said party of the second part shall not within the period of one year from the completion of said railroad to the first crossing resolve to undertake the further construction of said road to the second crossing aforesaid, then, to wit, after the expiration of the period of one year from the time of the completion of said road 475
to the said first crossing, the said parties of the first part shall become entitled, and shall for the further period of one year, possess the option to undertake to construct the railroad from the said first crossing to the said second crossing, at the proper cost and expense of the parties of the first part, but for the use and benefit of the party of the second part, upon the terms following, that is to say: The said party of the second part electing not to construct said railroad to the said second crossing, the said parties of the 476
first part, thereupon, within one year from the time of being notified of such election, undertaking the construction thereof, the said party of the second part shall issue and deliver to the said parties of the first part, from time to time, as the work of construction shall progress, the same amount of bonds per mile as hereinbefore provided in respect to the construction of said road to the said first crossing; and all the provisions, conditions, and agreements herein

contained in respect to the construction of the said road to the said first crossing, so far as the same are applicable, excepting hereinafter otherwise provided, shall apply equally to the construction thereof to the second crossing; and if the said railroad shall be constructed from the first to the second crossing by the parties of the first part as aforesaid, and completed within the period hereinafter mentioned, the said parties of the first part shall thereupon become entitled to receive, from the party of the second part, the same number of acres of land which the said party of the second part shall receive under said acts of Congress for the construction of said road from the said first to the said second crossing; and all the provisions hereof in respect to the lands to be received for the construction of said one hundred and five miles shall apply to the lands to be received for the construction of said railroad from the first to the second crossing.

And it is hereby further declared and agreed that either party undertaking the construction of said road from the first to the second crossing shall complete the same within three years from the time of the completion of the said road to the said first crossing.

And it is further understood and agreed that if the said parties of the first part shall undertake the construction aforesaid they shall, if the party of the second part shall so elect, construct the said railroad to a point on the northerly side of the Minnesota River, which the said party of the second part shall designate, and which shall not be more than twenty-eight miles distant from the said first crossing, with the same effect, so far as the provisions of this agreement are concerned, as if such party constructed the same to the said second crossing; provided, such construction to said point be made within the same time and in the same manner as hereinbefore provided in respect to the construction to the said second crossing.

And the said party of the second part further agrees, in consideration aforesaid, that it will not, at any time hereafter, encumber by mortgage or otherwise the said lands hereinbefore described, and which, by the terms of this agreement, are to be conveyed to the parties of the first part, or as they shall direct.

And the said parties of the first part further agree that all the expenses of procuring title to such lands, and the expenses of any and all conveyances which shall be made of said lands, shall be paid by the parties of the first part.

In witness whereof the said parties of the first part have hereunto set their hands and seals, and the said party of the second part has caused its corporate seal to be hereunto annexed and the same to

be attested by the signatures of its president and treasurer, the day and year first above written.

(Signed)

D. N. BARNEY. [SEAL.]
WM. G. FARGO. [SEAL.] 482
ANGUS SMITH. [SEAL.]
ALFRED M. HOYT. [SEAL.]
SAMUEL N. HOYT, [SEAL.]
By A. M. HOYT, *Atty.* [SEAL.]
A. H. BARNEY. [SEAL.]
BENJ. P. CHENEY, [SEAL.]
By A. H. BARNEY, *Atty.* [SEAL.]
C. F. LATHAM, [SEAL.]
By D. N. BARNEY, *Atty.* [SEAL.]
JESSE HOYT. [SEAL.]

WINONA AND ST. PETER RAILROAD COMPANY,
[W. & ST. P. R. R. CO. SEAL.] By GEO. L. DUNLAP, 483
President.

Sealed and delivered in the presence of—
CHARLES NETTLETON.

162 STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on the eighteenth day of December, A. D. one thousand eight hundred and sixty-seven, before me, the undersigned, Charles Nettleton, a commissioner resident in the city of 484
New York, duly commissioned and qualified by the executive authority and under the laws of the State of Minnesota to take the acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Danford N. Barney, William G. Fargo, Angus Smith, Alfred M. Hoyt, and Ashbel H. Barney, personally to me known to be five of the same persons described in and who executed the foregoing instrument of writing, and severally acknowledged to me that they had executed the same as their and each of their free and voluntary act and deed in their own behalf, and for the 485
uses and purposes therein mentioned; and on the same day also before me again personally appeared the said Alfred M. Hoyt, personally known to me to be the attorney in fact of Samuel N. Hoyt, one of the persons described in and who executed the foregoing instrument of writing by said attorney, and the said Alfred M. Hoyt acknowledged to me that he had, as such attorney, executed the same instrument as the free and voluntary act and deed of the said Samuel N. Hoyt and for the uses and purposes therein mentioned; and on the same day also before me again personally 486
appeared the said Ashbel H. Barney, personally known to me to be the attorney in fact of Benjamin P. Cheney, one of the persons described in and who executed the foregoing instrument of
163 writing, by his said attorney, and the said Ashbel H. Barney acknowledged to me that he had as such attorney executed the same instrument as the free and voluntary act and deed of the said Benjamin P. Cheney, and for the uses and purposes

therein mentioned; and on the same day also before me again personally appeared the said Danford N. Barney, personally known
487 to me to be the attorney in fact of Charles F. Latham, one of the persons described in and who executed the foregoing instrument in writing by his said attorney, and the said Danford N. Barney acknowledged to me that he had as such attorney executed the same instrument as the free and voluntary act and deed of the said Charles F. Latham, and for the uses and purposes therein mentioned.

And on the same day also before me personally appeared George L. Dunlap, to me personally known to be the president of The
488 Winona and St. Peter Railroad Company, described in and who executed the foregoing instrument of writing by said George L. Dunlap, as president, and the said George L. Dunlap being by me duly sworn, according to law, did depose and say that he resided in the city of Chicago, county of Cook, State of Illinois; that he was president of the said Winona and St. Peter Railroad Company; that he knew the corporate seal of the said company; that the seal affixed to the foregoing instrument, purporting to be the seal of said company, was such corporate seal; that it was so affixed by order
489 of the board of directors of said railroad company, and that he signed his name thereto by the like order as president of said company; and he also acknowledged to me that he had executed the said instrument as the free and voluntary act and deed of
164 the said Winona and St. Peter Railroad Company, for the uses and purposes therein mentioned.

And on this sixth day of January, A. D. one thousand eight hundred and sixty-eight, also before me personally appeared Jesse Hoyt, personally to me known to be one of the same persons
490 described in and who executed the foregoing instrument of writing, and he acknowledged to me that he had executed the same as his free and voluntary act and deed, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affix my official seal this 6th day of January, A. D. 1868.

[SEAL.] (Signed) CHARLES NETTLETON,
Commissioner for Minnesota in New York.

165 [Title of cause.]

493 *Stipulation as to interrogatories and cross-interrogatories.*

It is hereby stipulated and agreed by and between the respective parties to the above-entitled action that the interrogatories and cross-interrogatories attached hereto may be answered by the officers to whom they are addressed; and such answers, when signed by them, shall be attached to said interrogatories and cross-interrogatories and together therewith filed with William A. Spencer, esq., clerk of the United States district court, St. Paul, Minnesota, the master taking the testimony in said cause, and by him shall be certified to the above court, with the other evidence
494 taken before him, as a part of the testimony in said cause; and

that said interrogatories and the answers thereto shall be received in and considered as evidence in said cause as fully and with the same effect as if the testimony of said witnesses had been regularly and duly taken under and pursuant to the rules of said court.

Provided, That either party may object to any answer or statement that the same is not responsive, or that it is incompetent, irrelevant, or immaterial, or that any interrogatory or cross-interrogatory has not been fully or fairly answered.

August 19th, 1893. 495

ROB'T G. EVANS,
Special Asst. United States Attorney, of Counsel.

WILSON & BOWERS,
Attorneys for Winona & St. Peter Railroad Company
166 *and Minnesota Land and Investment Company.*

J. A. TAWNEY & H. M. LAMBERTON,
Attorneys for Winona & St. Peter Land Company and others.

Interrogatories propounded by the complainant to the Commissioner of 496
the General Land Office.

1. State your name and the official position now held by you.

2. State whether or not the several railroad land grants made by the Congress of the United States are administered in the Department of which you are the head, and whether such Department has charge of the certification and patenting of lands under the land grants aforesaid and the adjustment and final closing of all such 497 grants.

3. Are you familiar with the history and condition of the various grants of land in the now State of Minnesota made by Congress in aid of building certain lines of railroad in said State and in the Territory of Minnesota, of which the Winona and St. Peter Railroad Company, one of the defendants in the above-entitled cause, is now the beneficiary?

4. If your answer to the above interrogatory (number 3) is in the affirmative, state whether or not the said grants, or either of 498 them, of which the Winona and St. Peter Railroad Company is now the beneficiary, have ever been adjusted; and if so, state when such adjustment was made, and which of said grants have been so adjusted, and how.

167 *Cross-interrogatories propounded by counsel for the defendants.*

1. If you answer the second direct interrogatory in the affirmative, state when you became the head of such department, what you mean by the word "administered," and what you mean by the 499 expression, "the adjustment and final closing up of all such grants." State particularly and fully.

2. If you answer the direct interrogatory No. 3 in the affirmative, state fully and particularly all your knowledge and means of knowledge of the matters referred to in that interrogatory, and how and when you gained such knowledge.

3. If you answer the direct interrogatory No. 4, state fully and particularly all your knowledge and means of knowledge of the
500 subject-matter referred to in that interrogatory, and when and how you acquired the same, and what you mean by "adjusted." State also fully and particularly what land grants in aid of other lines of railroad, if any, have been "adjusted" in the sense in which you used that term, and when and how, and the names of such roads and the dates of such grants. State also how many and what other land grants remain un"adjusted" in the sense in which you use that term, and the names of such roads and the dates of such
501 grants, and give a list of all the lands applied for by, and all the lands certified to, the Winona & St. Peter Railroad Company, east of the west line of range 38, within the last ten years, and when they were applied for, and when certified and within what limits.

168 4. State whether you have any personal knowledge of the matters to which you have testified, or whether you have testified, in whole or in part, from information gained by or from the files or records of your office. If, aside from the information gained from such files or records, you have any personal knowledge
502 of any of the facts or matters to which you have testified, specify particularly the facts or matters of which you have such personal knowledge.

[Title of cause.]

Answers to interrogatories and cross-interrogatories by the Commissioner of the General Land Office.

503 I, S. W. Lamoreux, being duly sworn, upon my oath say and depose, in answer to the interrogatories and cross-interrogatories propounded to me and attached hereto, in the above-entitled cause:

1st. In answer to interrogatory number 1, my name is S. W. Lamoreux, and my official position is that of Commissioner of the General Land Office.

2nd. In answer to interrogatory number 2, I will state that all land grants made by Congress to aid in the construction of railroads are administered by this bureau of the Department of the Interior, under the supervision and direction of the Secretary of
504 the Interior, including the certification and patenting of land on account thereof and the adjustment and final closing of such grants.

3rd. In answer to interrogatory number 3, I will state
169 that my information in regard to land grants to aid in the construction of railroads is gained from information furnished me by those in charge of the records and files of this office pertaining to such grants, such persons having, by long service, become familiar therewith, and on whom I rely.

505 4th. In answer to interrogatory number 4, I will state that the records of this office fail to show that any adjustment was ever made either of the grant of March 3, 1857, or March 3, 1865, under which the Winona and St. Peter Railroad Company is the beneficiary prior to the passage of the adjustment act of March 3, 1887.

Since the passage of said act a preliminary adjustment has been made, upon which no action has yet been taken.

5th. In answer to cross-interrogatory number 1, I will state that I became Commissioner of the General Land Office March 29, 1893, 506
and by the word "administered," as here used, is meant conducted, executed, giving effect to, carrying out, the intention of Congress as construed by this Department and the courts, and by the expression "the adjustment and final closing of all such grants," is meant the full administration and settlement thereof which has received the approval of this Department.

6th. In answer to cross-interrogatory number 2, I will state that this interrogatory is fully answered in my answer to direct interrogatory number 3. 507

7th. In answer to cross-interrogatory number 3, I will state that my only means of knowledge is that disclosed by the records of this office, and the information given me by those having charge
170 of such records, and by "adjusted," as applied to land grants, is meant closed in the manner stated in my answer to cross-interrogatory number 1.

I will further state that none of the land grants within the State of Minnesota appear to have ever been adjusted or closed. During 508
the last ten years the Winona and St. Peter R. R. Co. has applied for the following lands, within the limits of its grant, east of the west line of range 38 W., to wit:

On February 26, 1885: N. $\frac{1}{2}$ NE. $\frac{1}{4}$ sec. 13, T. 111 N., R. 28 W.; E. $\frac{1}{2}$ NW. $\frac{1}{4}$ sec. 13, T. 111 N., R. 28 W.; NW. $\frac{1}{4}$ sec. 17, T. 111 N., R. 24 W.

On July 20, 1885: SE. $\frac{1}{4}$ sec. 25, T. 109 N., R. 35 W.

On June 17, 1887: Lots 4 and 5, sec. 13, T. 112 N., R. 34 W.; 509
lot 2, sec. 31, T. 111 N., R. 31 W.

Upon these selections no action appears to have been taken.

During said period no lands appear to have been certified or patented on account of said grant east of range 38 W.

8th. In answer to cross-interrogatory number 4, I will state that 510
I have no other knowledge of the matters to which I have testified than such as has been gained from the records of this office or furnished me by those having charge of such records.

[Duly signed and sworn to.]

171 *Interrogatories propounded by the complainant to the chief of the division of the General Land Office having in charge the administration of railroad land grants.*

1. State your name and the official position now held by you. 511

2. State whether or not the several railroad land grants made by the Congress of the United States are administered in the division of which you are the head, and whether such division has charge of the certification and patenting of lands under the land grants aforesaid, and the adjustment and final closing of all such grants.

3. Are you familiar with the history and condition of the various grants of land in the now State of Minnesota made by the Congress in aid of building certain lines of railroad in said State and in the Territory of Minnesota, of which the Winona and St. 512

Peter Railroad Company, one of the defendants in the above-entitled cause, is now the beneficiary?

4. If your answer to the above interrogatory (number 3) is in the affirmative, state whether or not the said grants, or either of them, of which the Winona and St. Peter Railroad Company is now the beneficiary, have ever been adjusted; and if so, state when such adjustment was made, and which of said grants have been so adjusted and how.

513 *Cross-interrogatories propounded by counsel for defendants.*

1. If you answer the second direct interrogatory in the
172 affirmative, state when you became the head of such division, what you mean by the word "administered," and what you mean by the expression "the adjustment and final closing up of all such grants." State particularly and fully.

514 2. If you answer the direct interrogatory number 3 in the affirmative, state fully and particularly all your knowledge and means of knowledge of the matters referred to in that interrogatory and how and when you gained such knowledge.

3. If you answer the direct interrogatory number 4, state fully and particularly all your knowledge and means of knowledge of the subject-matter referred to in that interrogatory, and when and how you acquired the same, and what you mean by "adjusted." State also fully and particularly what land grants in aid of other
515 lines of railroad, if any, have been "adjusted," in the sense in which you used that term, and when and how, and the names of such roads and the dates of such grants. State also how many and what other land grants remained un"adjusted," in the sense in which you use that term, and the names of such roads and the dates of such grants, and give a list of all the lands applied for by, and all the lands certified to, the Winona and St. Peter Railroad Company, east of the west line of range 38, within the last ten years, and when they were applied for and when certified, and within what limits.

516 4. State whether you have any personal knowledge of the matters to which you have testified, or whether you have testified in whole or in part from information gained by or from the files or records of your office. If, aside from the information gained
173 from such files or records, you have any personal knowledge of any of the facts or matters to which you have testified, specify particularly the facts or matters of which you have such personal knowledge.

[Title of cause.]

517

Answers to direct and cross-interrogatories by chief of railway division.

I, W. J. McGee, being duly sworn, upon my oath say and depose, in answer to the direct and cross-interrogatories propounded to me and attached thereto, in the above-entitled cause:

1st. In answer to direct interrogatory number one, my name is William J. McGee and my official position is that of Chief of the
518 Railroad Division of the General Land Office.

2nd. In answer to direct interrogatory number two, this division administers all land grants made by Congress to aid in the construction of land-grant railroads, certifies and patents lands thereunder, and adjusts and finally closes of all such grants, under the supervision and direction of the Commissioner of the General Land Office and the Secretary of the Interior.

3rd. In answer to direct interrogatory number three, I will state that my knowledge of the grant by Congress to aid in the construc- 519
tion of the railroad known as the Winona and St. Peter Railroad has been gained from personal examination of the files and records of this office relating thereto and from information fur-
174 nished me by persons who, from long service in the General Land Office, have become familiar therewith.

4th. In answer to direct interrogatory number four, the records of this office fail to show any adjustment either of the grant of March 3, 1857, or March 3, 1865, under which The Winona and 520
St. Peter Railroad Company is the beneficiary, to have been made prior to the adjustment act of March 3, 1887. Since the passage of said act a preliminary adjustment has been made, but final action thereon has not been taken.

CROSS-INTERROGATORIES.

1st. In answer to cross-interrogatory number one, I became Chief of the Railroad Division June 16, 1893, and by the word "administers," as here used, is meant construes, executes, gives effect to, and carries out the intention of Congress as interpreted by this Department and the courts; and by the expression "the adjustment 521
and final closing of all such grants" is meant the full administration and settlement thereof approved by this Department.

2nd. In answer to cross-interrogatory number two, said interrogatory was fully answered in my answer to direct interrogatory number three, excepting as to the time of acquiring the information, which has been acquired since my appointment as chief of this division.

3rd. In answer to cross-interrogatory number three, my only means of knowledge are the records of this office and the information given me by those familiar with the history of the various 522
grants through long experience in the General Land Office.

By "adjusted," as applied to land grants, is meant closed
175 in the manner stated in my answer to cross-interrogatory number one. Further, none of the land grants within the State of Minnesota appear to have been adjusted or closed.

During the last 10 years the Winona and St. Peter R. R. Co. has applied for the following lands within the limits of its grant east of the west line of range 38 W., to wit: 523

On February 26, 1885: N. $\frac{1}{2}$ NE. $\frac{1}{4}$ sec. 13, T. 111 N., R. 28 W.; E. $\frac{1}{2}$ NW. $\frac{1}{4}$ sec. 13, T. 111 N., R. 28 W.; NW. $\frac{1}{4}$ sec. 17, T. 111 N., R. 24 W.

On July 20, 1885: SE. $\frac{1}{4}$ sec. 25, T. 109 N., R. 35 W.

On June 17, 1887: Lots 4 and 5 sec. 13, T. 112 N., R. 34 W.; lot 2 sec. 31, T. 111 N., R. 31 W.

524 Upon these selections no action appears to have been taken.

During said period no lands appear to have been certified or patented on account of said grant east of range 38 W.

4th. In answer to cross-interrogatory number four, I have no other knowledge of the matters to which I have testified than such as have been gained from the records of this office or furnished me by clerks of this division who are familiar therewith.

Duly signed and sworn to.

WILSON C. BROWN, a witness called, sworn, and examined on behalf of the defendants, the Winona & St. Peter Railroad
176 Company, the Winona & St. Peter Land Company, and
525 the Minnesota Land & Investment Company, testifies as follows:

Examination in chief by Mr. WILSON:

Q. What is your name?

A. Wilson C. Brown.

526 Q. What is your age?

A. Forty-six years old.

Q. Where do you reside?

A. Winona, Minnesota.

Q. How long have you resided at Winona, Minnesota?

A. Since about the 20th of August, 1869.

Q. Since you have been at Winona, what has been your business?

A. I have been chief clerk in the office of the land department of the Winona & St. Peter Railroad Company from the 20th day
527 of August, 1869, until about the 20th day of April, 1876, and since that time I have been chief clerk in the office of the Winona and St. Peter Land Company.

Q. While you have been chief clerk of those companies, respectively, have you, or have you not, in fact, had the principal and almost sole control and superintendence of the lands of those respective companies as far as range 38 west from Winona, Minnesota?

A. I have had a good deal to do with them, and even further west than that.

Q. Have you, or have you not, had principal control of the
528 lands and superintendence over them?

A. I have, under the General Land Commissioner; yes, sir.

Q. Under Mr. Lamberton's directions?

A. Yes, sir.

177 Q. Has he, in the office, given any attention, except only to what you might report to him, or to questions submitted to him for his judgment?

A. Practically to that extent only.

Q. Are you, or are you not, familiar with the administration of these land grants?

529 A. Yes, sir.

Q. Before you came to Winona at all, what was your business?

A. I was employed as clerk in the United States land office at St. Peter, from April, 1864, until February, 1869.

Mr. EVANS. What part of April; the first of April?

WITNESS. I think the first of April, 1864.

Q. St. Peter; that is the district in which these lands lie, is it not?

A. Yes, sir. 530

Q. When you were in that land district how far west did the limits of that district extend?

A. From the eastern to the western boundary of the State.

Q. And so far north and south as took in both of those land grants?

A. Yes, sir.

Q. State whether you are, or are not, familiar with the country through which the Winona & St. Peter Railroad Company runs from Winona westward through the whole State.

A. I am quite familiar. 531

Q. State whether or not you do, or do not, keep your office for a part of the year outside of Winona, and among the lands, in order to make sales of these lands.

178 A. Yes, sir. During the past thirteen years I have had offices at different points along the line of the Winona & St. Peter Railroad Company, engaged in selling and disposing of the lands belonging to the land company.

Q. The lands belonging to and owned by this Winona & St. 532 Peter Land Company were acquired by it how?

(Objected to on the part of the complainant as immaterial, incompetent, and irrelevant.)

A. Acquired under the so-called Barney contract.

Q. Is that the contract in this suit referred to as Exhibit "D?"

A. I so understand it.

Q. Those are all the lands that they have?

A. The contract does not embrace these lands, not specifically; it does not enumerate them.

Q. How far west do the lands acquired under the Barney con- 533 tract run?

A. To nearly the west line of range 37.

Q. Do they, or do they not, take in all the lands enuring to the Winona & St. Peter Railroad Company, under its grant of 1857 and the grant of 1865, as far west as they go?

A. Not all of them. There are some few tracts within and east of range 37 that the railroad company owns.

Q. State how many, and what the character of the tracts is. 534

A. Well, there are a few scattering tracts, some in range 34, and I think some in range 35.

Q. About how many in all?

A. I don't think there is quite a section.

179 Q. All told?

A. Yes, sir.

Q. The railroad company reserved all that was necessary for itself for railroad uses and purposes?

A. Yes, sir.

535 Q. But except that, and except perhaps about a section all told, they took in the lands in all the limits out as far west as nearly the western line of range 37?

A. Yes, sir.

Q. Look at this deed which I here exhibit to you, and which purports to be a deed from the Winona & St. Peter Land Company to the Minnesota Land & Investment Company, dated June 15, 1887, granting to the latter company, for the consideration of six hundred dollars, the undivided half of the southwest quarter of section one, township one hundred and eight, range thirty-two, and
536 state, if you please, whether that in fact is or is not an original deed executed by the Winona & St. Peter Land Company to the grantee therein named.

A. Yes, sir.

Q. It is an original deed?

A. Yes, sir.

Q. Do you know the signatures of those persons executing that deed?

A. Yes, sir.

Q. You may state whether this is or is not the very form of
537 deed that is and has been used by the land company in making sales of its land.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. It is.

Q. You say it is?

180 A. Yes, sir.

Q. Including the covenants in each and every part of the deed?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

538 A. Yes, sir—well, I will qualify that answer a little bit; the form of the acknowledgment has been changed.

Q. But has the form of the deed been changed, except so far as the acknowledgment is concerned?

A. No, sir; not to my knowledge.

Q. Do you know?

A. I know it has not.

Q. Look at the endorsement on this deed, and see if you know whether that is the endorsement of the register of deeds of Brown County.

A. Yes, sir; it is.

539 Q. That is his handwriting?

A. Yes, sir; and also the county auditor.

Q. With both of which you are familiar?

A. Yes, sir.

Q. In making your deeds by that company to its grantees, and contracts by that company to its grantees, state whether it was or was not the rule to insert the true and real considerations in the deeds and in the contracts for which they were made.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

It is hereby stipulated and agreed between respective counsel 540
that the copy of the deed herewith presented and marked defendant's Exhibit F, is a true and exact copy of said deed and of all the endorsements thereon, and that the same shall be received
181 and accepted in evidence with the same force and effect as the original deed, but subject to the same objections as made to the original deed.

Said copy of said deed is now offered in evidence by defendants' counsel on behalf of the Winona & St. Peter Railroad Company and the Minnesota Land & Investment Company. 541

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, but not on account of the same being a copy.)

Q. In making your sales of land for the Winona & St. Peter Land Company, have you been accustomed to make them in small tracts or in large tracts?

(Objected to by complainant's counsel as incompetent, immaterial, and irrelevant.)

A. In small tracts or parcels, ranging from forty to one hundred and sixty acres each.

Q. Have they, or have they not, as a rule, been sold to persons 542
who purchased them for actual settlement and improvement?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir; they have.

Q. Have they, or have they not, as a matter of fact, immediately upon purchase been settled upon and improved?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir. The policy of the company has been to sell only 543
to those who would settle up and improve them.

(Counsel for the complainant objects to that portion of the
182 answer after the words "yes, sir," and moves to strike out the same as not responsive to the question.)

Q. Have they, or have they not, as a rule, continuously remained on them from the time of the purchase of them up to this date; that is, the purchasers?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.) 544

A. As far as I know, they have.

Q. Are you acquainted generally with the situation?

A. Generally they have. There are cases, of course, where they have disposed of them.

Q. What I mean is, have they, or have their grantees, remained on them and lived on them since?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Generally; yes, sir.

Q. Prior to the deed by the Winona & St. Peter Railroad Com- 545
pany to the Winona & St. Peter Land Company, were the lands under these land grants and, say, east of range 39, and from the eastern terminus of the road as far as range 39, on the market for sale and offered for sale?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir.

Q. Were the lands enuring to the Winona & St. Peter Railroad
546 Company under its land grant offered for sale?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir. They have been on the market.

Q. How long have they been on the market?

183 (Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. A large portion of them have been on the market for a great many years.

547 Q. And put on the market, or the first sales made, when?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. The first sales were made in 1865—the lands in the eastern portion of the State.

Q. Have they, ever since that time, been upon the market for sale?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes; that is, a large portion of them.

Q. If there was a portion that was not, state what portion, and give us the facts.

548 (Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. The first lands placed upon the market in 1865, according to my recollection, embraced lands as far west as Rochester.

Q. That is in what range?

A. Range 14. Later on lands west of that point, including range 31, were placed on the market for sale.

Q. About what time was that?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

549 A. I think a portion of them were placed on the market as early as 1869—possibly earlier than that.

Q. Were they not earlier than that?

A. No, sir. Within the indemnity limits my impression
184 is they were put on the market as far west as range 31—that is, within the indemnity limits—and within the place limits as far west as that in 1872 or 1873.

Q. And west of range 31, when?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

550 A. My recollection is the indemnity limits up to the west line of our grant, within the indemnity limits that is—and within all limits, I think—as early as 1876, except a body of lands which were then in controversy with the St. Paul & Sioux City Railroad Company.

Q. Were they or were they not offered during the pendency of that litigation?

A. I was going to say, also, some lands were involved in a controversy between Barney and the Winona & St. Peter Railroad Company.

Q. What was that controversy between the St. Paul & Sioux City 551
Railroad Company and the Winona & St. Peter Railroad Company?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

Q. What lands did that embrace, generally?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. That embraced a large number of acres in range 32 up to as far as range 39.

Q. Do you know whether there was any litigation between the 552
St. Paul & Sioux City Company and the Winona & St. Peter Railroad Company?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir; there was.

185 Q. When did that litigation commence?

(Objected to as immaterial, incompetent, and irrelevant, and also as not the best evidence.)

A. I think it was first instituted in 1872 or 1873 before the——

Q When did it commence in the courts? 553

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and as not the best evidence.)

A. I think in 1875.

Q. In what courts, the State or Federal?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and as not the best evidence.)

A. It was first commenced, as I recollect it, in the State courts.

Q. Do you know whether it embraced any of the lands in question in this very litigation? 554

(Objected to as immaterial, incompetent, and irrelevant, and as not the best evidence.)

A. Yes; it did.

Q. You say it commenced in the State court in 1875?

A. That is my recollection.

Q. How long did that litigation last, and into what courts was it carried?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and as not the best evidence.) 555

A. It was ultimately carried to the United States Supreme Court.

Q. What year did that litigation terminate, according to your best recollection?

186 (Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and not the best evidence.)

A. I think not until 1880.

Q. 1880 or 1881?

A. Possibly 1881; 1880 is my recollection. 556

Q. It commenced what year did you say?

(Objected to as immaterial, incompetent, and irrelevant, and as not the best evidence.)

A. I stated it commenced before the Interior Department in 1872 or 1873, and in the courts in 1875.

Q. You say in 1872 or 1873 in the Interior Department, and in the courts in 1875?

A. Yes, sir; that is my recollection.

Q. Was it not in court about ten years from the time it com-
557 menced; about ten years in court from the time it commenced until it was decided?

A. No, sir; about seven years.

Q. I understood you say there was a litigation about part of these lands between Barney and the Winona & St. Peter Railroad Company?

(Objected to by complainant's counsel as immaterial, incompetent, and not the best evidence.)

A. Yes, sir.

Q. Was not that the so-called Barney contract, Exhibit D?

558 (Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir. It grew out of the construction of that contract.

Q. Did it embrace any of these lands?

A. Yes, sir.

187 Q. And about how long did that litigation last, and through what courts did that go?

(Objected to as immaterial, incompetent, and irrelevant, and not the best evidence.)

559 A. The litigation in that case was commenced in 1878.

Q. That was commenced in the State court?

A. Yes, sir; and finally, as I recollect, upon application of the defense it was transferred to the United States circuit court of the district of Minnesota, and went through the ramification of the United States courts, and was finally determined in 1887.

Q. You say that embraced part of these lands in question?

A. Yes, sir.

Q. You say, except those lands embraced in those two suits, these
560 lands were on the market as early as what year?

(Objected to as immaterial, incompetent, and irrelevant.)

A. Well, within the indemnity limits I think as early as 1876.

Q. As far as the railroad company made sales, except this one transfer of land which was made pursuant to the decree in that suit, state whether or not the Winona & St. Peter Railroad Company sold in small lots or parcels, or in large quantities?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

561 A. It was sold in small quantities.

Q. And to actual settlers or not?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

188 A. Yes, sir; to actual settlers, that is my understanding.

Q. Your understanding is what?

A. That it was sold in small tracts or portions.

Q. And sold to whom?

A. To actual settlers. 562

Q. You may state what, if any, effort was made by the Winona & St. Peter Railroad Company to advertise these lands for sale.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. The railroad company advertised the lands within its grant quite extensively; and issued maps and circulars and pamphlets.

Q. How were those maps, circulars, and pamphlets distributed; how widely?

(Objected to by complainant's counsel as immaterial, incompetent, 563 and irrelevant.)

A. Very generally.

Q. State whether or not these maps did or did not show every subdivision that they had acquired and had for sale that they advertised.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. They did, all the lands within the limits of the grants, as I recollect it.

Q. You say those were circulated very widely and very generally? 564

A. Yes, sir.

Q. About what year did they first begin with these advertisements of these lands?

A. I think in 1876.

189 Q. You may state whether the Winona & St. Peter Land Company after it acquired any of these lands did or did not advertise them for sale.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir. We also issued a map in 1882 showing the lands 565 from range 26 to about the west line of range 37. It showed the line of the railroad and the lands owned by the company.

Q. Showing the subdivisions?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir; showing the subdivisions.

Q. You may state whether or not that map was widely circulated or not.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.) 566

A. Yes, sir; it was generally circulated. And we also advertised the lands in the newspapers, in some newspapers, and in other ways also.

Q. Until this suit was commenced, or just about the time that this suit was commenced, did the United States or anyone on its behalf, as far as you were aware, intimate or pretend that there was any defect whatever in the title of the land company, or of the railroad company, to these lands or any of them?

(Objected to by complainant's counsel as immaterial, incompe-
567 tent, and irrelevant.)

A. No, sir; not to my knowledge.

Q. You have stated what your connection with this matter was?

A. Yes, sir.

190 Q. Mr. Lamberton was your superior in the office; in other words, he is the nominal land commissioner of the Winona & St. Peter Land Company?

A. He is the actual commissioner.

Q. You reported to him?

568 A. Yes, sir.

Q. Who is the land commissioner of the Winona & St. Peter Railroad Company?

A. Mr. Charles E. Simmons.

Q. The Winona & St. Peter Railroad Company held lands west of those held by the Winona & St. Peter Land Company?

A. Yes, sir.

Q. Did the persons who purchased these lands pay for them the full consideration for lands of that grade in the country at the time
569 at which they were sold?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. The lands were sold under contract principally.

Q. What I want you to understand is this: Were they sold for the full cash value of such lands in that country at that time?

(Objected to as immaterial, incompetent, and irrelevant.)

570 A. Yes, sir; as we believed was the value of such lands.

Q. The St. Paul & Sioux City Railroad Company had a land grant immediately south of that, had they not?

A. Yes, sir.

191 Q. Do you know whether under the act of 1857 and the act of 1864 granting lands to that company the St. Paul & Sioux City Railroad Company took and was limited to the alternate odd-numbered sections.

(Objected to by complainant's counsel as immaterial, incompe-
571 tent, and irrelevant.)

A. That is my understanding. I am not familiar with the act of 1864, though.

Q. Do you know whether when a deed was made by the State to the railroad company, the Winona & St. Peter Railroad Company, or I will ask you as to any company in this State, it was recorded on or before delivery to the railroad company?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. It was recorded in the office of the secretary of state before
572 delivery.

Q. Was or was not that the uniform rule?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir; it was.

It is here stipulated and agreed between respective counsel that the D. Blakely, who signed Exhibit No. 3, attached to the stipulation, was at that time secretary of state of the State of Minnesota. It is also stipulated and agreed that the A. H. Barney, who signed Exhibit No. 3A, attached to said stipulation, was at that date the 573
treasurer of the Winona & St. Peter Railroad Company.

Q. Do you remember at what time the Winona & St.
192 Peter Railroad Company was built past these lands, say, commencing at Winona and running through to range 39?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. It was built at different dates.

Q. Do you remember those dates? 574

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. It was constructed as far as Rochester, I think, in 1864, a distance of about fifty miles, and as far as Waseca, over a hundred miles, in the fall of 1867; and from there westerly to New Ulm, I think, in 1872.

Q. And clear through to its western terminus when?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. In 1873. 575

Q. Waseca is in what range?

A. Range 22.

Q. And New Ulm is in what range?

A. Range 30.

Cross-examination by Mr. EVANS:

Q. I understood you to say that the lands which were conveyed finally to the Winona & St. Peter Land Company, and all lands conveyed to the Winona & St. Peter Land Company by the Winona & St. Peter Railroad Company were conveyed pursuant to that 576
Barney contract?

A. Yes, sir.

Q. And in consideration of that contract, and for the consideration named in that contract?

193 A. Yes, sir.

Q. That was done by Barney and his associates, designating the Winona & St. Peter Land Company as the person to whom the conveyance should be made, pursuant to the terms of the contract?

A. Yes, sir. There was a large amount of land conveyed to 577
them by direction of the court under the decree.

Q. But the Winona & St. Peter Land Company was designated by Barney and his associates as the party to whom the land was to be conveyed?

A. Yes, sir.

Q. It was conveyed for the consideration named in the contract, as you have stated?

Mr. WILSON. Do you know that?

WITNESS. That is my understanding.

578 Q. During all the time since these lands were certified to the State, and since they came into the possession and ownership of the railroad company, or of the land company, isn't it true that there has been a controversy as to the title and ownership of a large portion of them, between various individuals claiming them as Government lands, and the various companies who owned them?

A. No, sir; not to my knowledge.

Q. Isn't it true that there has been considerable litigation between the Winona & St. Peter Land Company, or the Winona
579 & St. Peter Railroad Company, or both of them, and various individuals who claimed those lands as settlers; that is, as to some of the same in controversy being claimed by settlers?

A. There have been a few cases of that nature.

194 Q. A few cases?

A. Yes, sir.

Q. Can you tell about how many?

A. I think there are some five or six cases.

580 Q. Are the parties who bought these lands from the railroad company or from the land company, as you have testified, in possession of the lands now, any of them or their grantees, who purchased from them?

A. Generally, I think they are.

Q. Isn't it true that there are now suits pending, or proceedings pending, between such parties and claimants of the lands, or some of them, to obtain possession of the lands?

581 (Objected to by defendant's counsel as immaterial, incompetent, and irrelevant.)

A. Where we have sold and conveyed them?

Q. Yes, where you have sold and conveyed.

A. And other parties are claiming them?

Q. Yes, and other parties are claiming them; the parties to whom you sold are not in possession, but trying to claim them.

A. I don't know of any.

Q. You don't know of any?

582 A. I don't recollect any such cases, as I understand the purport of your question.

A recess is here taken until 1.30 p. m., the same day, at which time the parties being present by their respective solicitors
195 and the commissioner likewise being present, the taking of the depositions is proceeded with as follows:

WILSON C. BROWN, recalled on redirect examination, testifies as follows:

583 By Mr. WILSON:

Q. Counsel for complainant asked you whether the deed to the Winona & St. Peter Land Company was made at the instance of Barney and his associates?

A. The deeds?

Q. Yes, the deeds to the Winona & St. Peter Land Company.

A. There are several deeds.

Q. Well, the deeds that the Winona & St. Peter Land Company got, they were made at the instance of Barney.

A. Yes, sir; except as to the deeds of the lands under that decree. 584

Q. Except that?

A. Yes, sir.

Q. You don't know at whose instance that was made?

A. That was made by the direction of the court, as I understood it.

Q. But where Barney & Co. directed lands to be *be* deeded to A, B, C, D, as they did, did not the persons to whom the lands were conveyed pay the consideration therefor?

(Objected to by complainant's counsel as immaterial, incompetent, 585
and irrelevant.)

A. Yes, sir.

Q. In other words, when any person would direct, or the
196 land company directed the conveyance of a piece of land to any person, that person paid for that piece of land?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir.

Q. The person to whom the land was conveyed paid the consid- 586
eration for the land?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir.

Q. As far as you know, that was true also of the Winona & St. Peter Railroad Company?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir.

Q. Counsel asked you about these suits or some suits being brought by or against persons to whom the Winona & St. Peter 587
Land Company had conveyed lands; and as I understand it, you said you didn't remember about any such.

A. I don't remember of any such cases.

Q. Were there not some cases of controversy about lands that had not been conveyed to the land company?

A. Yes, sir; there were cases of that kind.

Q. Do you remember that Mr. Tibbetts was registrar of the United States land office at St. Peter?

A. Yes, sir. 588

Q. About what years was that?

A. Mr. Tibbets was registrar from the year 1861 until 1865, I think; and also from May, 1869, until 1873. He was in there for two terms.

197 Q. At some time while he was registrar did he not permit any persons to file on some of these lands that had been certified to the Winona & St. Peter Railroad Company under its grants?

A. He allowed quite a number of pre-emption filings on some of the lands embraced in this controversy in the year 1871. 589

Q. Mr. Evans. After they had been certified.

Q. When was that? Was it before or after they had been certified?

A. I don't think they had been certified.

Q. Do you remember whether there were any controversies or contests about those lands until he permitted these filings to be made, and whether those filings were confirmed or whether they were set aside?

(Objected to by complainant's counsel as immaterial, incompetent,
590 and irrelevant.)

A. They were all subsequently set aside and cancelled by the Commissioner of the General Land Office.

Q. Were those cases where he permitted filings cases where there had been prior to that time either pre-emption declaratory statements or homestead entries?

A. I think in the majority of cases there had been homestead entries.

Q. That were either abandoned or illegal?

591 A. I can't say as to the illegality of them.

Q. They were not followed up?

A. No, sir.

Q. You say the Interior Department set aside all those?

198 (Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. The Commissioner of the General Land Office in the Interior Department cancelled them.

Q. Did he or did he not certify them to the State for the benefit
592 of the railroad?

A. Yes, sir; they were all certified to the State for ——

Q. For the benefit of the railroad?

A. For the benefit of the railroad company.

Q. You may state whether or not there were in the State court one or two or three contests of the same kind made.

(Complainant's counsel objects to the question as immaterial, incompetent, and irrelevant, and not the best evidence.)

593 A. There were two or three cases. There was one in Dodge County.

Q. Whether there was one or more than one; was there one of those cases that was not decided in favor of the railroad company in the State court?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and not the best evidence.)

A. They were all decided in favor of the railroad company.

Q. Was there any case, or were there any cases, commenced in
594 the United States circuit court of that kind?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and not the best evidence.)

A. There was one case.

199 Q. Do you remember the title of the case?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and not the best evidence.)

A. It was the case of Thomas McQuat.

Q. Do you remember before whom it was tried?

(Objected to by complainant's counsel as immaterial, incompe- 595
tent, and irrelevant, and not the best evidence.)

A. It was tried before Judge Dillon, if I recollect right.

Q. And how was it decided?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and not the best evidence.)

A. Decided in favor of the company.

Q. That is in the circuit court?

(Objected to as immaterial, incompetent, and irrelevant, and not 596
the best evidence.)

A. Yes, sir.

Q. In this city?

A. Yes, sir.

Q. The case at Rochester was tried before what district judge?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and not the best evidence.)

A. I think before Judge Buckham.

Q. And this before Judge Dillon? 597

A. Yes, sir.

Q. According to your best recollection, was there ever a case of this kind, either before the Interior Department or before
200 the State courts, or before the United States circuit court, that was not decided in favor of the title of the railroad company?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and not the best evidence.)

A. No, sir. 598

Q. How long ago were these suits, that McQuat suit, before Judge Dillon, and the suit in the State court before Judge Buckham?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and as not the best evidence.)

A. The Dodge County case was twelve or fifteen years ago.

Q. How long ago was the case before the United States circuit court?

(Objected to by complainant's counsel as immaterial, incompe- 599
tent, and irrelevant, and as not the best evidence.)

A. At least ten years ago.

Q. Who was it that personally negotiated the sales on behalf of the Winona & St. Peter Railroad Company, as a rule, with those who purchased from them?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Mr. Lamberton and myself.

Q. Which did it mostly or principally? 600

A. I did.

Q. In negotiating those sales to those parties was there
201 ever the least doubt on your part, or, as far as you knew, on their part, of the perfect and absolute title in the land company?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

601 A. No, sir.

HARRY I. ORWIG, a witness called and sworn on the part of the defendants, the Winona & St. Peter Railroad Company, the Winona & St. Peter Land Company, and the Minnesota Land & Investment Company, testified as follows:

Examination in chief by Mr. WILSON:

Q. Where do you live?

602 A. I live at Winnetka, Illinois.

Q. How near to Chicago is that?

A. Seventeen miles.

Q. What is your business?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. Fourteen years.

Q. Employed with any company?

A. I was in business for myself up to 1886, and since then I have been with the Chicago & Northwestern Railway Company.

603 Q. In what capacity, as draftsman, or engineer, or both?

A. Both; my principal work now is drafting, making drawings.

Q. Look at this map, which I here exhibit to you, and state whether you ever saw it before.

202 A. Yes, sir; I made that map.

(Said map is marked defendant's Exhibit G.)

Q. You say you made that map?

A. Yes, sir.

Q. You may state whether that map does correctly represent the

604 limits of the St. Paul & Sioux City Railroad Company's land grant, and the Winona & St. Peter Railroad Company's land grant, and their conflicts, within the towns and ranges that this indicates.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. It does.

(Said map is now offered in evidence on the part of the defendants above named.)

(Objected to by complainant's counsel as immaterial, incompetent,

605 and irrelevant.)

CHARLES E. SIMMONS, a witness produced and sworn on the part of the defendants, the Winona & St. Peter Railroad Company, the Winona & St. Peter Land Company, and the Minnesota Land & Investment Company, testifies as follows:

Examination in chief by Mr. WILSON:

Q. You live where?

A. I live at Oak Park, Cook County, Illinois.

606 Q. How near Chicago is that?

A. Nine miles.

Q. Where is your place of business?

A. In Chicago; the general offices of the Chicago & Northwestern Railroad Company.

203 Q. What, if any, positions have you held?

A. Land commissioner of that company, and of The Winona & St. Peter Railroad Company, and others.

Q. How long have you been land commissioner of The Winona & St. Peter Railroad Company?

A. Since July, 1878. 607

Q. Before that time did you hold any place in that company?

A. I was assistant land commissioner of the same companies from September, 1876, to November, 1877.

Q. Before any deed was made by The Winona & St. Peter Railroad Company to The Winona & St. Peter Land Company, was The Winona & St. Peter Railroad Company accustomed to deed lands within its land grant from its eastern terminus as far out as range 39?

(Objected to by complainant's counsel as immaterial, incompe- 608
tent, and irrelevant.)

A. Yes, sir.

Q. Can you state the covenants of warranty in those deeds, if there were any covenants of warranty?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. I can give you the form of covenants.

Q. Will you repeat them over, please?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. "And the said party of the first part doth hereby, for itself 609
and its successors, and each and every of them, covenant and agree to and with the said party of the second part, heirs and assigns, in the manner and form following; that is to say, that the

204 premises hereby conveyed are part and parcel of the lands granted by acts of Congress to the State of Minnesota, and by said State to the party of the first part; that the same are free and clear of and from any and all incumbrances and liens made, done, committed, or executed by the said party of the first part; 610
and the same in the quiet and peaceable possession of the said party of the second part against all and every person or persons claiming by, through, or under it, the said party of the first part will forever warrant and defend."

Q. Is this the very form of covenants in all of those deeds?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. I think this is the form that was used in all the deeds, but if 611
any change has ever occurred it was a very slight one, not altering the sense.

Q. Do you mean that all the deeds had those covenants?

A. Yes.

Mr. EVANS. All the deeds had those covenants?

Mr. WILSON. Yes; that were made by The Winona & St. Peter Railroad Company.

Mr. EVANS. All of them had those covenants?

612 WITNESS. Except in some special cases where deeds were made under the decree in the case of Barney and others against The Winona & St. Peter Railroad Company.

Q. Were there any covenants in that deed you speak of
205 in the case of Barney and others against The Winona & St. Peter Railroad Company made in pursuance of that decree?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. There was a covenant against the acts of the grantor only.

613 Q. No covenant of seizin?

A. No, sir; no covenant of seizin.

Q. No other covenant, except against the acts of the grantor?

A. That is all.

Q. You may state whether that deed was made in form pursuant to the order of the United States circuit court.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and not the best evidence.)

614 A. It was.

Q. Upon that very point?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant, and as not the best evidence.)

A. Yes, sir.

Q. Do you remember how soon the Winona & St. Peter Railroad Company commenced the advertising of these lands for sale, and the sale of them, commencing at Winona and running out to
615 any place between Winona and range 39?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. It commenced before my connection with the com-
206 pany, so I can not answer definitely. I know that sales were being made; I know from the records of the company that sales were made as early as 1873, and it might have been earlier.

Q. Thereafter were these lands continuously advertised?

616 (Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. The railroad company commenced a vigorous advertising of the lands in the summer of 1876; and thereafter advertised them extensively for ten or twelve years.

Q. You may state how extensively, and how that advertising was done.

(Objected to by complainant's counsel as immaterial, incompetent and irrelevant.)

A. By newspaper advertising, by printing and the distribution
617 of circulars, pamphlets, and maps, and handbills, and the usual methods of advertising lands.

Q. Were those circulars and handbills and maps advertised widely?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Very extensively.

Q. You may state whether the maps and circulars and handbills, or any of them, showed the very lands that the company offered for sale.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. We printed in 1876 and continued to print at intervals over 618
a number of years, a map which showed all the subdivisions; showed them in shades or colors, sometimes by shading and sometimes by coloring, all the parcels of land that were embraced in the
207 deed from the State to the company. There were two of such maps, one showing them by shading and another by color. And thereafter a new edition of a map was published when necessary, and whenever a new edition of a map was published we added to the map any additional lands that had been acquired by the com- 619
pany, so that the map would show all the lands that the company had acquired.

Q. Did it or did it not show, as advertised for sale, and as being sold, the very lands in question in this suit?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. One of those maps showed all the lands embraced in this suit, and the other one showed only the lands west of range 36.

Q. This advertising of which you speak is exclusive of and in 620
addition to the advertising by the Winona & St. Peter Land Company.

A. Yes, sir.

Q. About how many acres of the lands in question in this suit remain unsold, that is, unsold by the Winona & St. Peter Railroad Company at the date of the commencement of this suit?

A. About two hundred and forty acres.

Q. Before this suit was commenced had the United States, or anyone else on its behalf, made any claim whatever to the lands in 621
question in this suit, or that the lands in question in this suit had not been absolutely and legally conveyed to the Winona &
208 St. Peter Railroad Company, or that it or its grantees were not legally in possession, or the legal owners thereof.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. A rule was served on the company in 1888 to show cause why suit should not be instituted for the recovery of these lands. 622
That is the first time that the United States ever called the title in question.

Q. Did you on behalf of the company sell these lands as they were sold after you became land commissioner?

(Objected to as immaterial, incompetent, and irrelevant.)

A. Nearly all the lands in this suit were conveyed by the Winona & St. Peter Land Company; only two or three parcels of them were——

Q. I mean the lands of the railroad company after you became 623
land commissioner; did you act on behalf of the railroad company?

A. I did. All the sales were made through the department that I have control of, by my agents or employees in that department.

Q. Were those sales reported to you?

A. They were all reported to me, and they were all sold subject to my approval.

Q. In making these sales, and in making those contracts, had
624 you any question or doubt whatever of the unquestioned legal title of the company to those lands?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.

A. I had no doubt of the title.

209 Q. As far as you know, had any person purchasing from you any question or doubt or intimation that there was any question or doubt about these titles?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

625 A. No, sir; none whatever.

Q. Were all these sales made for the full cash value of the lands as you understood it to be?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. All sales made by the railroad company other than those to the land company were sold at the full market value of the lands, as we understood it.

Q. And those sales to the land company were sold in pursuance of directions from Barney and his associates, were they not?

(Objected to by complainant's counsel as immaterial, incompe-
626 tent, and irrelevant.)

A. Yes, sir; they were deeded pursuant to the orders of A. H. Barney & Co.

Q. And of the decree of the court?

A. Yes, sir; and of the decree of the court in the suit of A. H. Barney and others against the Winona & St. Peter Railroad Company.

Q. The St. Paul & Sioux City Railroad Company had a land grant immediately adjoining and contiguous to that of the Winona & St. Peter Railroad Company?

(Objected to by complainant's counsel as immaterial, incompe-
627 tent, and irrelevant.)

A. Yes, sir; intersecting it.

Q. It overlapped at certain places?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

210 A. Yes, sir.

Q. Under what acts, if you know, did the St. Paul & Sioux City Railroad Company acquire its grant?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

628 A. Under the act of May 3d, 1857, and May 12th, 1864.

Q. You may state, if you know, or whether you do know, whether the St. Paul & Sioux City Railroad Company under those grants took and was confined to the alternate odd-numbered sections within its limits?

(Objected to by complainant's counsel, as immaterial, incompetent, and irrelevant.)

A. It was. Perhaps that is not a full answer to the question. It did take lands shown in the alternate odd-numbered sections 629
and was confined to them.

Q. Do you know whether the deeds made to the Winona & St. Peter Railroad Company were recorded before they were delivered to the railroad company; and if so, where?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. They were recorded in the office of the secretary of state before they were delivered to the railroad company.

Q. What was your policy in making sales, or sales that you had 630
made, except to the Winona & St. Peter Land Company—were they sold in small or large parcels or tracts?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

211 A. We endeavored to sell in small parcels to actual settlers. That was the policy of the company.

Q. Was that substantially the rule?

A. Yes, sir; almost invariably the rule.

Q. How soon did this railroad company commence to sell its land under this land-grant act?

(Objected to by complainant's counsel as immaterial, incompe- 631
tent, and irrelevant.)

A. Well, that was before my time. I can answer that——

Q. Ever since you have been either land commissioner or assistant land commissioner?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir. They sold a good many lands before that.

Q. And ever since that time they have been selling them? 632

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Yes, sir. Ever since September, 1876, they have been selling them rapidly; as rapidly as possible.

DEFENDANT'S EXHIBIT F.

The Winona and St. Peter Land Company.

WARRANTY DEED. 633

This indenture, made this 15th day of June, in the year of our Lord one thousand eight hundred and eighty-seven (A. D. 1887), between the Winona and St. Peter Land Company, party
212 of the first part, and Minnesota Land and Investment Company, of the State of Minnesota, party of the second part.

Witnesseth, that the said party of the first part, for and in con-
634 sideration of the sum of six hundred ($600.00) and no-100 dol-
lars, to it in hand paid by the said party of the second part, the
receipt whereof is hereby acknowledged, has granted, bargained,
sold, released, and conveyed, and doth, by these presents, grant,
bargain, sell, release, and convey unto the said party of the second
part, its successors and assigns, forever, all that tract or parcel of
land situate, lying, and being in the county of Brown, in the State
of Minnesota, known and described as follows, to wit: The undi-
vided half of the southwest quarter of section No. one (1), in town-
ship No. one hundred and eight (108) north, of range No. thirty-two
635 (32) west, of the fifth principal meridian, containing, according to
the United States survey thereof, eighty and —100 acres, be the
same more or less; reserving, however, unto the Winona and St.
Peter Land Company aforesaid, its successors and assigns, from
the operation and effect of this conveyance, all that portion of said
land above described (if any such there be) which lies within lines
drawn on each side of, parallel with, and fifty feet distant from the
center line of the main track of the railroad of the Winona and St.
636 Peter Railroad Company, as said railroad is now located and con-
structed in said county and State, and any greater width, not
exceeding one hundred feet in width on each side of the center line
of said main track of said railroad when necessary permanently
to include all cuts, embankments, and ditches and other
213 works of said railroad company necessary to secure and pro-
tect its main lines of railroad.

To have and to hold the same, together with, all and singular,
the hereditaments and appurtenances thereunto belonging, or in any-
wise appertaining, unto the said party of the second part, its suc-
637 cessors and assigns, forever. And the said party of the first part
doth hereby, for itself and its successors, and each and every of
them, covenant and agree to and with the said party of the second
part, its successors and assigns, in the manner and form following,
that is to say:

That the premises hereby conveyed are part and parcel of the
lands granted by act of Congress to the State of Minnesota for the
purpose of aiding in the construction of a railroad from Winona,
via St. Peter, to a point on the Big Sioux River, south of the forty-
fifth parallel of north latitude, and by said State granted to the
638 Winona and St. Peter Railroad Company, and by the said Winona
and St. Peter Railroad Company conveyed to the Winona and St.
Peter Land Company, the said party of the first part; that the same
are free and clear of and from all encumbrances and liens, made,
caused, or executed by the said party of the first part; and the same
in the quiet and peaceable possession of the said party of the second
part, against all and every person or persons claiming by, through,
or under it, the said party of the first part will forever warrant and
defend.

639 Signed, sealed, and delivered in presence of—

JAS. W. JACKSON.

H. L. HAY.

WINONA & ST. PETER LAND COMPANY. [SEAL.]

214 In testimony whereof the Winona & St. Peter Land Company hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its vice-president and attested by its secretary, the day and year first above written.

THE WINONA AND ST. PETER LAND COMPANY.
By ALFRED W. HOYT, *Vice-President.* 640
Attest:
C. T. BARNEY, *Secretary.*

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 30th day of June, in the year of our Lord one thousand eight hundred and eighty-seven, before me, the subscriber, a commissioner in and for the State of New York, appointed by the governor of the State of Minnesota to take acknowledgment and proof of the execution of deeds and other 641 instruments of writing, to be used or recorded in the State of Minnesota, personally came Alfred W. Hoyt and C. T. Barney to me known, who, being by me duly sworn, did say that he is vice-president and secretary of the Winona and St. Peter Land Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and seal of office the day and year last above 642 named.

HENRY L. HAY,
Commissioner for Minnesota.
[Commissioner seal of Minnesota.]

215 Said deed is indorsed as follows: No. 1718. C. No. 4761. No. 485.

WARRANTY DEED.

The Winona and St. Peter Land Company to Minnesota Land and 643 Investment Company.

STATE OF MINNESOTA, *County of Brown, ss:*

I hereby certify that the within deed was filed in this office for record on the 19th day of July, A. D. 1887, at 11 o'clock a. m., and was duly recorded in book 30 of warranty deeds, on page 50.

A. J. GRUNNIER,
Register of Deeds of County. 644

Taxes paid and transfer entered this 19th day of July, A. D. 1887.
E. P. BERTRAND,
County Auditor.

E. P. FREEMAN, a witness of lawful age, produced and sworn on the part of the defendants the Winona & St. Peter Railroad Company, and the Winona & St. Peter Land Company, and the
645 Minnesota Land and Investment Company, testifies as follows:

Examination in chief by Mr. WILSON:

Q. Where do you reside?

A. I officially reside at Marshall, Minnesota.

216 Q. Do you hold any office there?

A. I am at present receiver of the United States land office at Marshall, Minnesota.

Q. How long have you held that office?

A. Four years last past.

646 Q. Did you ever hold the office of either of registrar or receiver of an United States land office before; and if so, when and where?

A. Yes. I was registrar of the United States land office at Jackson, Minnesota, from 1869 to 1873; and subsequently I was registrar of the United States land office at Redwood Falls, about 1883, for two years. I don't remember exactly what two years it was, but I think it was the two years just succeeding Mr. Cleveland's first Administration.

Q. Have you examined the records of the United States land office at Marshall?

647 A. Yes, sir.

Q. Lately?

A. Yes, sir; within the last five or six weeks.

Q. Have you examined them so as to ascertain and be able to say whether there were at the date of the act of June 22, 1874, any unoccupied Government lands within the limits of the Winona & St. Peter Railroad Company's grant, in the even-numbered sections?

A. Yes, sir; I have examined the list with a view of ascertaining that fact, if there were any.

Q. What did you discover was the fact?

648 (Objected to by complainant's counsel as immaterial, incompetent, and irrelevant; also as not the best evidence.)

A. I discovered that at the date of that act (June 22, 1874)
217 there were a great many tracts of Government lands on the even sections subject to be taken by settlers.

Q. Were they reserved or settled upon?

(The same objection on the part of complainant's counsel.)

A. They were vacant unappropriated public lands, subject to be
649 taken under any of the land laws of the United States, homestead or preemption acts.

Q. Were they in any way reserved from that railroad company's grant, or not?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. No, sir.

Q. How many acres of those lands were there at that time, within the limits of that grant, subject to be so taken?

650 (Objected to as immaterial, incompetent, and irrelevant.)

A. In the examination I made of six or seven or eight towns I discovered over nine thousand acres of that class of land.

Q. And you only went over that number of towns?

(The same objection as the last.)

A. Yes, sir.

Q. They were all within the limits of that grant as then adjusted?

A. Yes, sir; as then adjusted. I examined the plats and the records with a view of ascertaining that fact.

Q. You may state whether the plats and the records of the office 651
show whether that was so or was not so?

A. Yes, sir; the records and the plats show that.

Q. They show just that state of facts?

A. Yes, sir.

218 Q. Did you or did you not make any examination as to this fact, whether those lands since that time have been taken up?

(All this testimony is taken subject to the objection of the complainant's counsel as being immaterial, incompetent, and irrelevant.)

A. They have all since been taken. There are no vacant lands 652
there now. I had to examine the location to see whether they were vacant at that time or not. They were all covered by homestead entries. I had to examine the book of homestead entries to see whether they were vacant or not, and I found they were all taken up subsequent to the date of that grant; that is, in the even-numbered sections.

Q. You say there are none of these lands vacant now?

A. No, sir; they are all taken by settlers.

Q. As a matter of fact, do you know or do you not know 653
whether all the vacant lands within the limits of that grant are now taken?

A. They are all taken.

(All this testimony is taken subject to the objection of the complainant's counsel as being immaterial, irrelevant, and incompetent; and it is agreed that it may be considered as so objected to without the objection being raised at the time each question is put to the witness.)

Cross-examination by Mr. EVANS:

Q. When you speak of lands in even sections, or even numbers, 654
you refer to even-numbered sections?

A. Yes; certainly.

Q. Within what limits?

219 A. Within the granted and indemnity limits of the Winona & St. Peter road.

Q. Within both the granted and indemnity limits?

A. Yes, sir.

Q. In your testimony with reference to the lands you found vacant and unoccupied at the time of the Act of June, 1874, within what limits was your testimony addressed to, within the 655
granted limits or the indemnity limits?

A. I found these in the granted and indemnity limits.

Q. Both?

A. Yes, sir; both.

Q. Then you referred, as I understand it, to both the granted and indemnity limits in your testimony?

A. Yes, sir.

Redirect examination by Mr. WILSON:

656 Q. You may state whether these lands that you have referred to were in the granted or indemnity limits—that is, the greater part of them.

A. They were principally in the indemnity limits.

Q. You say they were principally in the indemnity limits. Were they nearly all in the indemnity limits?

A. I think so; in 139, 140, 141, 142, and 143.

Q. You say those were all in the indemnity limits?

A. Yes, sir; I think so.

Q. Do you remember now whether they were all principally in
657 the indemnity limits?

A. Yes, sir; they were principally all in the indemnity limits, as I remember it.

Q. Please state whether those lands in that grant originally lay in the Winona district.

220 A. Yes, sir.

Q. And afterwards the location of that land office was changed to the Faribault district?

A. They went from Winona to Faribault.

658 Q. And after the location of the office was changed from Faribault did they lie in the St. Peter district?

A. Yes; they went to the St. Peter district.

Q. And after the office was changed from St. Peter, did they lie in the Redwood Falls district?

A. They went from St. Peter to New Ulm.

Q. Didn't they go from St. Peter to Redwood?

A. They made a new district. They formed a new district from New Ulm; they made a new district out of New Ulm and called it the Redwood district; it was formed out of part of New Ulm, so they had the New Ulm and the Redwood district.

Q. Both of them?

659 A. Yes, sir.

Q. Then what did they do after that?

A. Then from New Ulm they went to Tracy, and the Redwood office was still retained. Then the Winona and Worthington districts and the Tracy district and the Redwood district were all consolidated in the Marshall district.

Q. And they now lie in the Marshall district?

A. Yes, sir; all the records for these different offices and the plats and the letters are all at Marshall, Minnesota.

660 Q. The letters and plats and records from all these offices then are now at Marshall, Minnesota?

A. Yes, sir; all of them from all the different districts; they are now consolidated, or, rather, are in the consolidated district at Marshall.

221 WILSON C. BROWN, a witness produced on the part of the defendants, the Winona & St. Peter Railroad Company, the Winona & St. Peter Land Company, and the Minnesota Land & Investment Company, testifies as follows: 661

Examined in chief by Mr. WILSON:

Q. You have been a witness in this case before?

A. Yes, sir; I think so.

Q. You may state whether you are now, and for a good many years have been, in the employ of the Winona & St. Peter Land Company.

A. Yes, sir.

Q. In what capacity?

A. I have been in their employ in the capacity of chief clerk since the organization of the company in 1876.

Q. Have you or have you not made an examination to ascertain what taxes that company had paid on the lands here in question, 662 and for what years?

A. Yes, sir; I have.

Q. Do you know?

A. Yes, sir.

Q. Look at this list which I here present to you. Have you seen that list before?

A. Yes, sir. I compared it personally.

Q. Does that list truly state the taxes by that company paid on these lands, and the years for which they were paid?

A. Yes, sir. 663

(Counsel for defendant now offers in evidence said list of lands.

Objected to by complainant's counsel as immaterial, incom-
222 petent, and irrelevant; but no objection is raised to the same, on the ground that said list is not the best evidence.

Said list is received in evidence, and marked defendants' Exhibit G hereof.

Counsel for defendants above named now offers in evidence a certified list of lands made by the State auditor of the State of 664 Minnesota, under and in pursuance of the laws of the State of Minnesota, of the lands belonging to the Winona & St. Peter Railroad Company in the county of Dodge, that being the county in which these lands in question lie.

Objected to as immaterial, incompetent, and irrelevant.

Said list is received in evidence, and marked defendants' Exhibit H hereof.)

H. W. LAMBERTON, a witness produced and sworn on the part 665 of the defendants, the Winona & St. Peter Railroad Company, the Winona & St. Peter Land Company, and the Minnesota Land & Investment Company, testifies as follows:

Examined in chief by Mr. WILSON:

Q. Where do you live?

A. Winona.

Q. How long have you lived there?

A. Nearly all the time for thirty years.

666 Q. What is your business?

A. Land commissioner of the Winona & St. Peter Land Company.

Q. How long have you been land commissioner of that company?

223 A. Since 1876, the date of the organization of the company.

Q. Were you land commissioner of the Winona & St. Peter Railroad Company before that time?

A. I was.

667 Q. For how long?

A. From 1866 to until, I think, two or three years of the date of the organization of the land company.

Q. Do you remember a suit brought by the Winona & St. Peter Land Company against one of the defendants in this suit, Thomas Marshall, jr.?

A. I remember it. I can't remember the date.

Q. You remember the fact, the circumstance?

A. Yes, sir. I remember a suit was brought.

Q. Since the determination of that suit has Mr. Marshall made any claim to this land, or before this suit was brought that is now pending, did he suggest in any way to you that he made any claim

668 thereto adverse to your company?

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. Not that I remember. I don't remember him making any.

Q. Is there any person else representing the Winona & St. Peter Land Company living in this State except those in your employ and who are subordinate to you?

A. No, sir; not any other.

669 Q. You say you remember no such claim or pretence made by him?

A. No, sir.

Q. Prior to the commencement of this suit, and after the

224 decision in that case against Marshall, did anybody make any claim to this land adversely to the rights of your company under the Winona & St. Peter Railroad Company?

(Objected to by complainant's counsel as immaterial, incom-

670 petent, and irrelevant. It is agreed that all this testimony may be considered as objected to without counsel for complainant interposing an objection to each question.)

A. No, sir; not to my knowledge.

Q. You say they did not?

A. They did not.

Q. You may state whether, since this land was conveyed to the Winona & St. Peter Land Company by the Winona & St. Peter Railroad Company, your company has been advertising it for sale or not.

(Objected to by complainant's counsel as immaterial, incompetent, and irrelevant.)

A. They have. 671

Q. Continuously?

(The same objection on the part of the complainant's counsel.)

A. Yes, sir; continuously.

Q. How was it advertised?

(The same objection on the part of complainant's counsel.)

A. By pamphlets and maps; and it was generally circulated among the occupants and others that we had lands for sale in Dodge County, and plats were sent out. 672

Q. Did you know the incorporators and stockholders of the Winona & St. Peter Land Company?

A. I did.

Q. How long have you known them?

225 A. For about 25 years; yes, 26 or 27 years.

Q. Are they, or are they not, residents of the United States; all of them?

A. I believe they are. They are all residents of the United States, and I believe they are all citizens of the United States.

Q. Were they, or were they not, according to your belief and 673 acquaintance, born in the United States?

A. I believe they were; yes, sir.

(All this testimony is taken subject to the objection of complainant's counsel, as immaterial, incompetent, and irrelevant.)

Q. You have stated the length of time you have been land commissioner of the Winona & St. Peter Land Company; you may repeat that.

A. Since the organization of the company in 1876. 674

Q. And you were land commissioner of the railroad company before that for how long?

A. For ten years, with the exception of two or three years; I think it was between 1873 and 1875.

Q. You are still land commissioner of the Winona & St. Peter Land Company?

A. Yes, sir; I am still land commissioner of the land company.

Q. When was it that you first learned that any question was made as to the title to the lands in question in this suit—that is, the lands of the Winona & St. Peter Land Company, the lands of the 675 Winona & St. Peter Railroad Company, and its grantees?

A. It was a short time prior to the commencement of this suit.

226 (Objected to by complainant's counsel as immaterial, incompetent, and irrelevant; and all testimony of this witness it is agreed shall be taken to this objection without the necessity of counsel for complainant interposing an objection to each question.)

Q. Until a short time prior to the commencement of this suit 676 did any person make any adverse claim to those lands as against the Winona & St. Peter Railroad Company or its grantees?

A. No; except the case of Thomas McOuat.

Q. That suit of Thomas McOuat referred to what description of land, if you know?

A. The southwest quarter of 29-110-27.

Q. There was an adverse claim made to this particular subdivision, was there?

A. Yes, sir; there was.

Q. By whom?

677 A. By Thomas McOuat.

Q. Did he bring a suit in the United States federal court to obtain it as against the railroad company?

A. He did.

Q. Do you remember before whom that suit was tried?

A. Before Judge Dillon, I think.

Q. Did Judge Nelson sit with him?

A. I have forgotten.

Q. But you know Judge Dillon did?

A. Yes, sir.

678 Q. How was that suit decided?

A. In favor of the company and adversely to McOuat.

Q. Since the decision in that suit has McOuat, or any-
227 one else, made any claim to that land as against this company, except about the time this suit was commenced?

A. No; not that I know of.

Q. Have you under your control as land commissioner all the lands granted to the Winona & St. Peter Railroad Company,
679 except those used for actual railroad purposes, east of range 37?

A. I have, with a few exceptions.

Q. How many exceptions would there be?

A. Isolated cases where the title was acquired afterwards.

Q. How many, about?

A. Probably six.

Q. Did the whole amount to more than one section of land?

A. Probably one and a half or two sections of land.

680 Q. It wouldn't be more than that?

A. No, sir.

Q. Have you all that under your control?

A. Yes, sir.

Q. And under your charge?

A. Yes, sir.

Q. Within these years, with the single exceptions you speak of, up to the time of the commencement of this suit, has there been any adverse claim made to those lands?

A. No, sir; not that I remember of. There were several eject-
681 ment cases commenced two or three years before this suit.

Q. Two or three years before this suit was begun, you say there were certain ejectment cases begun?

A. Yes, sir.

228 Q. Do you remember who the persons were?

A. I don't remember. These ejectment cases were commenced by the company.

Q. The ejectment cases were brought by the company against persons claiming the land?

682 A. Occupying the lands.

Q. How many cases were there of that kind?
A. Four or five, I should think; four or five.
Q. Who was it that had charge of them under your supervision?
A. Mr. W. C. Brown.
Q. He was more familiar with the details than you?
A. Yes, sir; or fully as familiar as I was. He attended to the trial of the cases.
Q. Prior to the making of this deed to the Winona Land Company were these lands advertised by the Winona & St. Peter Railroad Company?
A. Yes, sir; they were. 683
Q. And lands out as far west of what point—west of Winona?
A. Oh, as far as range 38.
Q. Winona is the easterly terminus of the Winona & St. Peter Railroad Company's grant, is it?
A. Yes, sir.
Q. How were those lands advertised by the Winona & St. Peter Railroad Company?
A. By maps that were printed and by pamphlets that were printed and circulated.
Q. Have they been sold in large tracts or in small tracts to 684
actual settlers?
A. In small tracts without any exception.
Q. To actual settlers?
A. Yes, sir; except one section.
229 Did the persons to whom these sales were made go at once into possession?
A. Yes, sir; I believe they did. They were sold with that in view.
Q. As a rule, did they do so?
A. To the best of my knowledge, they did. 685
Q. And have the persons to whom they were sold, and their grantees, remained in actual possession?
A. I believe they have.
Q. Have they been cultivating these lands since?
A. To the best of my knowledge, they have.
Q. Do you remember a suit being brought by Barney and his associates against the Winona & St. Peter Railroad Company?
A. Yes, sir; I do.
Q. For part of these lands? 686
A. Yes, sir.
Q. That included lands running out how far west?
A. As far west as range 38.
Q. What was the policy and rule of your land company as to the class of persons to whom you would make sales?
A. Only to actual settlers and persons who wished to go in there to go on the lands.
Q. Without going into any particular tract, you may state what the fact is generally, as to whether these lands have or have not increased largely in value by the improvements put upon them by 687
purchasers.

A. They have been largely increased in value.

Q. In selling these lands, as you did as land commissioner
230 of the land company, when you sold them had you any question or doubt whatsoever as to the validity of the title of the company?

A. I had not.

Q. As far as you know, had these persons who purchased them
688 any doubt whatsoever as to the validity of the title?

A. I do not believe they had.

Q. You may state whether in considering the pay for these lands, was the price at which you were selling them the price at which such lands were saleable and sold at, at the time you made those sales.

A. They were sold for their full prices.

Q. You may state whether the consideration expressed in the deeds and contracts expresses the honest real consideration to be paid for the lands, and which prices were in fact paid.

689 A. Yes, sir.

Q. That was the price paid for the lands by these actual settlers.

A. Yes, sir. In all the contracts and deeds the full consideration was expressed.

Q. You may state whether prior to the making of the deeds any of these lands were sold on contracts to persons who paid a portion of the price down.

A. The great majority of them were sold that way.

Q. Then, when these lands were sold under contract, was the
690 full payment made at the time the contract was made?

A. They were sold on the instalment plan.

Q. They paid from year to year?

A. Yes, sir.

231 Q. When the deed was made was it dated as of the actual date when the deed was made?

A. It was.

Q. How long did contracts sometimes run before a deed was made?

691 A. Ten or twelve years; sometimes as high as 15 years.

Q. Did the grant to the St. Paul & Sioux City Railroad Company lie immediately contiguous to the grant of the Winona & St. Peter Railroad Company through a number of towns and ranges?

A. It did; that is, they were so contiguous that they overlapped.

Q. Did they overlap?

A. Yes, sir; they overlapped.

Q. Do you remember under what acts of Congress the St. Paul
692 & Sioux City Railroad claimed and got its grant?

A. The acts of 1857, 1864, and 1865, I believe.

Q. Did they claim under the act of 1865, or not?

A. I am not positive.

Q. When deeds were made by the State to the railroad company, you may state whether they were at once recorded.

A. In the office of the State land commissioner; yes, sir.

Q. In the State capitol?
A. Yes, sir; at the State capitol. 693
Q. Was that done before the deed was delivered to the company?
A. I don't think so in all cases, but about that time. I
232 think, probably, the deeds were taken home and checked up before they were recorded, in some instances.

Cross-examination by Mr. EVANS:

Q. You say that the title of the land company was not questioned, 694
as far as you know, until within a few years before this suit was instituted?
A. Yes, sir; a very few years.
Q. And the company did have a suit with McOuat?
A. Yes, sir.
Q. And several suits in ejectment?
A. Yes, sir.
Q. Against persons who were occupying these lands?
A. The suit with McOuat was several years ago. These eject- 695
ment suits were commenced at a more recent date.
Q. They were commenced before this suit was commenced, were they not?
A. Yes, sir.
Q. In all these cases the persons against whom these suits were commenced or brought were persons who claimed that the lands in question were Government lands, and that as Government lands they were subject to entry or filing under the homestead or preemption laws?
A. I didn't interview them. 696
Q. Was not that the claim?
A. They were occupying the lands, claiming that they had——
233 Q. Did they not claim, and was not that the defence, that they were Government lands excepted from the grant?
(Objected to.)
Q. Was not that the claim and the defence, that they were Government lands excepted from the grant to the Winona and St. Peter Railroad Company, and therefore subject to preemption filing or 697
homestead entry?
(Objected to by defendants' counsel as not the best evidence.)
A. They never made that claim to me. I never interviewed them.
Q. Was not that your understanding, that they claimed that? Did you not understand that they claimed the right of occupancy, and that it was based upon the fact that they had the right to enter these lands, and intended to enter these lands or file upon them as 698
homestead entries or preemption filings?
A. They claimed adversely to the company. They were squatters on the lands.
Q. And ever since those proceedings were commenced has not the fact been a mooted question, and were you not, as an officer of the land company, aware that it was claimed by various parties that the lands in controversy in this suit were excepted from the

operations of the grant to the Winona & St. Peter Railroad Company, and were Government lands?

699 A. Not that I am aware of. I didn't know that. I was surprised when I saw the list involved in this suit.

Q. Isn't that true as to some of the lands involved in this suit?

234 A. Those that had settlers on them; I understood it was claimed that they were excepted from the grant.

Q. Were there not a good many of them in that condition?

700 A. Not that I was aware of. We commenced ejectment proceedings against those that we discovered. They were claiming that by the occupants. That was claimed by the occupants; yes.

Q. Do you know about how many of those ejectment cases were commenced?

A. I think there were about half a dozen of them.

Q. That were on lands involved in this suit?

A. I believe they were. I couldn't tell unless I knew the lands,

701 what the descriptions were; I couldn't tell unless I knew the descriptions, whether they were all involved in this suit or not.

Q. Did you have any personal intercourse with the purchasers of these lands, or was it done through others in your employ?

A. It was done through others.

Q. Then, when you testified as to their belief and understanding with reference to the title to these lands, all that you know with reference to the sales of lands to them is upon information which you have obtained from others in your employ? You don't know

702 anything of your own personal knowledge?

A. No; the lands were largely sold from the Winona office by correspondence, and Mr. Brown, as agent of the company, for the last two or three years had gone round the country, and had

235 an office at Springfield for the convenience of purchasers who came to purchase.

Q. And so you had no personal intercourse with those parties yourself?

A. No, sir.

703 Q. You didn't make those sales to the purchasers?

A. Some of them I did, and the larger part of them were made under my supervision at the Winona office. I signed the contracts.

Q. Did you talk with those people with reference to the title as to whether they believed that they had a title to those lands or not?

A. No, sir; I didn't.

Q. You never heard them say that, did you?

A. No, sir.

Q. When you spoke of the St. Paul and Sioux City grant over-

704 lapping the grant to the Winona & St. Peter Railroad Company, you refer to those parts which were involved in the suit which is referred to in the stipulation in this case?

A. The overlapping limits I referred to by the Sioux City Company and the Winona and St. Peter Company were indicated by maps received from the General Land Office. Our fifteen-miles

limits overlapped their six-mile limit, and they took the lands in that case; and where our six-mile limit overlapped their grant we took the lands.

Q. As against their indemnity grant? 705

A. Yes, sir.

Q. You are familiar with the suit between these two companies?

A. Yes, sir; I was.

236 Q. That is referred to in the stipulation in this case?

A. I presume it is.

Q. You stated in your examination in chief that the St. Paul & Sioux City road claimed under two grants, the act of March 3, 1857, and the act of May 12th, 1864. Is that right?

A. Yes, sir; I believe those were their grants. 706

Q. Those were their grants?

A. Yes, sir.

Q. Do you know what grant it was under which the St. Paul & Sioux City Railroad Company claimed the right to lands within the granted six-mile limits of the Winona & St. Peter Railroad Company, which were involved in the suit you have referred to?

A. I think it was the grant of 1857 they claimed under.

Q. You think it was the act of 1857? 707

A. I think so. My impression is that they claimed that they located in advance of us. It must have been the act of 1857, because that act took priority over the act of 1854.

Redirect examination by Mr. WILSON:

Q. Counsel on cross-examination asked you if you inquired of the purchasers whether they considered that the title to the land was good; I understand you to say you did not?

A. Whether they understood it was good? 708

Q. When you were making these sales, was there any question whatever about it?

A. No; I don't remember that anybody made any in-

237 quiry. I was going to say that. There was no question arose as to the title. It was presumed that the title was good.

Q. The man that had the direct and principal supervision, and who came mostly in contact with the purchasers was Mr. Wilson C. Brown, who has been examined as witness in this case?

A. Yes, sir. 709

Q. You yourself signed all the contracts that were made?

A. Yes, sir; I signed all the contracts.

Q. You say that Brown went out into the interior among these lands and kept his office at different places for his convenience and for the convenience of settlers?

A. Yes, sir; kept his office at different places; at Springfield and at Lamberton, in order to facilitate business. 710

Q. The cases in which a question was made by individuals against the company, to which you have referred, were cases in which they were living on the land?

A. Yes, sir; as I understood it.

Q. And you brought suit against them to eject them?

A. Yes, sir.

Q. Before the year 1885, did you ever, to the best of your recollection, hear a claim that the lands on which there had been a pre-
711 emption entry or a homestead filing, that had been either abandoned or set aside, did not pass to the railroad company?

A. It is my understanding that they did, without question.

Q. Up to the year 1885?

238 A. Yes, sir.

Recross-examination by Mr. EVANS:

Q. You don't mean to be understood as saying that all the lands in controversy in this suit which were claimed by the Winona
712 & St. Peter Land Company have been sold?

A. No, sir; the larger part of them, I think, have been contracted.

Q. The larger portion?

A. Yes, sir; the larger portion of these lands involved in this suit.

Q. And the balance of the lands involved in this suit have not been sold?

A. No, sir.

Q. And the title remains in the Winona & St. Peter Land Company?

713 A. Yes, sir; in the Winona & St. Peter Land Company.

DEFENDANT'S EXHIBIT G.

Statement of the amount of taxes paid on the northeast quarter of section No. 35, township No. 106 north, of range No. 18, for the years of 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, and 1892.

[Northeast quarter sec. 35, Tp. 106, R. 18.]

714

Year.		Date of payment.	Year.		Date of payment.
1873	$36.70	Aug. 27, 1875	1884	$16.70	May 13, 1885
715 1874	17.93	Aug. 27, 1875	1885	19.02	May 14, 1886
1875	13.32	May 27, 1876	1886	14.54	May 11, 1887
239 1876	12.82	May 4, 1877	1887	17.60	May 16, 1888
1877	21.59	May 31, 1878	1888	16.67	Apr. 25, 1889
1878	16.50	May 27, 1879	1889	16.47	May 10, 1890
1879	23.13	May 28, 1880	1890	19.67	Apr. 24, 1891
1880	20.05	May 30, 1881	1891	19.54	Apr. 25, 1892
1881	21.58	May 17, 1882	1892	23.52	May 12, 1893
1882	12.56	May 31, 1883			
716 1883	21.89	May 13, 1884	Total	$381.80	

STATE OF MINNESOTA, AUDITOR'S OFFICE,
February 21, 1879.

I, Orlen P. Whitcomb, auditor of the State and ex officio commissioner of the State land office, do hereby certify that the annexed list of lands has been carefully examined and compared with the official lists of lands on file in this office certified to the State by the Commissioner of the General Land Office and transmitted by the
717 Interior Department of the General Government, and that the same is a full, correct, and accurate list of the lands situated in the county of Dodge, in the State of Minnesota, certified to said
240 State, and by the said State conveyed to The Winona & St. Peter Railroad Company by deeds bearing dates October 4, 1864, Feb. 2, 1867, and Sept. 2, 1868.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of St. Paul, on the day and year first above written.

(Signed) ORLEN P. WHITCOMB, 718
Auditor of State and ex officio Com'r State Land Office.

[State land office seal of Minnesota.]

Dodge County.

Part of sec.	Sec.	Tp.	R.	Acres.	100ths.	
E. ½	1	105	16	319	.95	
SW. ¼	"	"	"	160	.....	
NW. ¼	3	"	"	159	.65	
S. ½	"	"	"	320	.....	719
All of	5	"	"	639	.62	
Und. ½ W. ½ of NE. ¼	7	"	"	40	.....	
Und. ½ NW. ¼	"	"	"	81	.44½	
Und. ½ S. ½	"	"	"	161	.14½	
N. ½ of NE. ¼	9	"	"	80	.....	
W. ½	"	"	"	320	.....	
W. ½ of SE. ¼	"	"	"	80	.....	
SW. ¼ of NE. ¼	11	"	"	40	.....	
W. ½ of NW. ¼	"	"	"	80	.....	
SE. ¼ of NW. ¼	"	"	"	40	.....	
NE. ¼ of SE. ¼	"	"	"	40	.....	
W. ½ of SE. ¼	"	"	"	80	.....	
SW. ¼	"	"	"	160	.....	
NE. ¼	13	"	"	160	.....	720
E. ½ of NW. ¼	"	"	"	80	.....	
NW. ¼ of SE. ¼	"	"	"	40	.....	
E. ½ of SW. ¼	"	"	"	80	.....	
SW. ¼ of SW. ¼	"	"	"	40	.....	
241 SW. ¼ of NE. ¼	15	105	16	40	.....	
SE. ¼	"	"	"	160	.....	
S. ½ of SW. ¼	"	"	"	80	.....	
Und. ½ all of	17	"	"	320	.....	
Und. ½ all of	19	"	"	320	.55	
Und. ½ all of	21	"	"	320	.....	721
All of	23	"	"	640	.....	
All of	25	"	"	640	.....	
NE. ¼	27	"	"	160	.....	
Und. ½ NW. ¼	"	"	"	80	.....	
W. ½ of SE. ¼	"	"	"	80	.....	
Und. ½ SW. ¼	"	"	"	80	.....	
Und. ½ all of	29	"	"	320	.....	
Und. ½ all of	31	"	"	320	.19	
Und. ½ all of	33	"	"	320	.....	
NE. ¼ of NE. ¼	35	"	"	40	.....	
NE. ¼ of SE. ¼	"	"	"	40	.....	
S. ½ of SE. ¼	"	"	"	80	.....	
SW. ¼	"	"	"	160	.....	
E. ½ of SW. ¼	11	106	"	80	.....	722
NW. ¼ of NW. ¼	15	"	"	40	.....	
E. ½ of NE. ¼	21	"	"	80	.....	
SW. ¼ of SE. ¼	"	"	"	40	.....	
NW. ¼ of SW. ¼	"	"	"	40	.....	
SW. ¼ of SW. ¼	23	"	"	40	.....	
NE. ¼ of NE. ¼	25	"	"	40	.....	
NE. ¼ of NW. ¼	"	"	"	40	.....	
W. ½ of NW. ¼	"	"	"	80	.....	
NW. ¼ of SE. ¼	"	"	"	40	.....	
S. ½ of SE. ¼	27	"	"	80	.....	
E. ½	29	"	"	320	.....	
N. ½ of NE. ¼	31	"	"	80	.....	723
S. ½ of SE. ¼	"	"	"	80	.....	
S. ½ of NE. ¼	33	"	"	80	.....	
NW. ¼	"	"	"	160	.....	
E. ½ of NW. ¼	35	"	"	80	.....	
SE. ¼ of SE. ¼	"	"	"	40	.....	
242 E. ½ of SW. ¼	11	108	16	80	.....	
SW. ¼ of SE. ¼	7	106	17	40	.....	
SW. ¼ of SE. ¼	9	"	"	40	.....	
S. ½ of SE. ¼	15	"	"	80	.....	
Lot 7	19	"	"	40	.....	724
Lot 8	"	"	"	40	.....	
Lot 12	"	"	"	40	.....	
SW. ¼	23	"	"	160	.....	
NE. ¼	31	"	"	160	.....	
N. ½ of SW. ¼	29	"	"	80	.....	
Lots 9, 10, 11, and 12	31	"	"	168	.69	

Dodge County—Continued.

	Part of sec.	Sec.	Tp.	R.	Acres.	100ths.
	SE. ¼	31	106	17	160	
	NW. ¼	33	"	"	160	
	SE. ¼	35	"	"	160	
	SW. ¼	"	"	"	160	
	Und. ½ SE. ¼ of SE. ¼	5	107	"	20	
	W. ½ of NE. ¼	21	"	"	80	
	N. ½ of NW. ¼	"	"	"	80	
725	Lot 11	19	"	"	40	
	SW. ¼ of SW. ¼	29	"	"	41	
	Lot 3	31	"	"	46	.93
	SE. ¼ of NW. ¼	35	"	"	40	
	SE. ¼ of NW. ¼	1	108	"	40	
	N. ½ of SE. ¼	"	"	"	80	
	Lots 1 and 6	7	"	"	80	
	Lots 9 and 10	"	"	"	93	.95
	NE. ¼ of SW. ¼	13	"	"	40	
	NE. ¼ of NE. ¼	15	"	"	40	
	E. ½ of NW. ¼	17	"	"	80	
	Und. ½ lots 3 and 4	19	"	"	46	.46
726	Und. ½ lots 9 and 10	"	"	"	46	.98
	Und. ½ lots 3, 4, and 9	31	"	"	66	.81
	All of	1	105	18	639	.40
	E. ½	3	"	"	319	.33
	Und. ½ W. ½	"	"	"	159	.71½
	Und. ½ all of	5	"	"	320	.28
	Und. ½ E. ½ of NW. ¼	7	"	"	40	
243	Und. ½ S. ½	7	105	18	160	.22½
	Und. ½ all of	9	"	"	320	
	NE. ¼	11	"	"	160	
	Und. ½ NW. ¼	"	"	"	80	
	SE. ¼	"	"	"	160	
727	Und. ½ SW. ¼	"	"	"	80	
	Und. ½ all of	13	"	"	320	
	NW. ¼ of NW. ¼	3	106	"	40	.08
	NE. ¼	5	"	"	159	.75
	NW. ¼	5	"	"	159	.57
	SE. ¼	5	"	"	160	
	Und. ½ SW. ¼	5	"	"	80	
	Und. ½ NE. ¼	7	"	"	80	
	Und. ½ NW. ¼	"	"	"	78	.70½
	Und. ½ SE. ¼	"	"	"	80	
	Und. ½ SW. ¼	"	"	"	78	.72½
	W. ½ of NE. ¼	9	"	"	80	
	NW. ¼	15	"	"	160	
728	SE. ¼	"	"	"	160	
	SW. ¼	"	"	"	160	
	Und. ½ E. ½	17	"	"	160	
	Und. ½ SW. ¼	17	"	"	80	
	Und. ½ SE. ¼	19	"	"	80	
	Und. ½ E. ½ of NW. ¼	19	"	"	40	
	Und. ½ E. ½ of SW. ¼	19	"	"	40	
	E. ½	21	"	"	320	
	Und. ½ SW. ¼	25	"	"	80	
	SW. ¼	25	"	"	160	
	All of	27	"	"	640	
	Und. ½ all of	29	"	"	320	
	Und. ½ NE. ¼	31	"	"	80	
729	Und. ½ NW. ¼	"	"	"	79	.11½
	Und. ½ SE. ¼	"	"	"	80	
	Und ½ all of	33	"	"	320	
	E. ½	35	"	"	320	
	NW. ¼	"	"	"	160	
	SW. ¼	"	"	"	160	
244	Und. ½ S. ½ of NW. ¼	1	107	18	40	
	Und. ½ N. ½ of SE. ¼	"	"	"	40	
	Und. ½ SW. ¼	"	"	"	80	
	Und. ½ NE. ¼ of NW. ¼	3	"	"	19	.65
	Und. ½ NW. ¼ of NE. ¼	5	"	"	19	.83
730	Und. ½ S. ½ of SE. ¼	7	"	"	40	
	Und. ½ lot 3	"	"	"	14	.98
	Und. ½ S. ½ of SW. ¼	"	"	"	38	.19
	SW. ¼ of SE. ¼	13	"	"	40	
	W. ½ of NW. ¼	15	"	"	80	
	NW. ¼ of NW. ¼	17	"	"	40	
	NE. ¼	23	"	"	160	
	SE. ¼ of SW. ¼	"	"	"	48	
	SE. ¼ of SE. ¼	25	"	"	40	
	NE. ¼	31	"	"	160	
	Und. ½ of NW. ¼	"	"	"	77	.46
	SE. ¼	"	"	"	160	

Dodge County—Continued.

Part of sec.	Sec.	Tp.	R.	Acres.	100ths.	
Und. ½ SW. ¼	31	107	"	77	.82	
E. ½ of NE. ¼	1	108	"	80	.04	
Und. ½ W. ½	7	"	"	156	.59	
Und. ½ NE. ¼	9	"	"	80	.....	731
E. ½ of SE. ¼	13	"	"	80	.....	
Und. ½ SW. ¼	13	"	"	80	.....	
Und. ½ S. ½ of NW. ¼	15	"	"	40	.....	
Und. ½ S. ½ of SE. ¼	"	"	"	40	.....	
Und. ½ SW. ¼	"	"	"	80	.....	
Und. ½ NW. ¼	17	"	"	80	.....	
Und. ½ S. ½ of NW. ¼	19	"	"	38	.44½	
Und. ½ W. ½ of SW. ¼	"	"	"	36	.77½	
Und. ½ S. ½	23	"	"	160	.....	
Und. ½ SW. ¼ of NW. ¼	29	"	"	20	.....	
Und. ½ SE. ¼	33	"	"	80	.....	
Und. ½ SE. ¼	35	"	"	80	.....	732

REGISTER'S OFFICE,
Dodge Co., Minn., ss:

I hereby certify that the foregoing is a correct copy of the
245 list of lands granted by the State of Minnesota to the Winona & St. Peter Railroad Company as the same are shown by list on file in this office.

Witness my hand and official seal this 29th day of November, 1879.

[SEAL.] J. M. BEIDLEMAN, 733
Register of Deeds.

Office of the register of deeds, Dodge County.

STATE OF MINNESOTA,
Dodge County, ss:

I, J. M. Beidleman, register of deeds in and for said county of Dodge, do hereby certify that the above and annexed list of lands of the Winona & St. Peter Railroad Company, in said county of Dodge, and the certificate of the State auditor on and annexed 734
thereto have been compared by me with the original list of such lands and with the said State auditor's certificate thereon and thereto filed in my office and remaining of record therein, in pursuance of chapter 97 of the laws of 1875 of this State, and that the above and annexed is a correct transcript thereof and of all said list and certificate.

In witness wherof I have hereunto set my hand and affixed the seal of my said office this first day of December, A. D. 1879.

[SEAL.] J. M. BEIDLEMAN, 735
Register of Deeds, Dodge Co., Minn.

246 CHARLES T. BARNEY, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

By Mr. TAWNEY:

Q. Your full name is Charles T. Barney?

A. Yes, sir. 736

Q. You reside in New York City?
A. Yes, sir.
Q. Have resided here how long?
A. Over twenty-five years.
Q. You are a son of Ashbel H. Barney?
A. Yes, sir.
Q. Are you in any way connected with the defendant, the Winona & St. Peter Land Company?
A. I am secretary and treasurer.
Q. How long have you acted in that capacity?
A. Since its organization in 1876.
737 Q. Have you the articles of incorporation of the Winona & St. Peter Land Company?
A. Yes, sir.
Will you read the article which specifies the amount of the capital stock of the company?
Witness here reads as follows:
A. "Article Third: The capital stock of said corporation is five hundred thousand dollars, ten per centum of which shall be paid in at the time of subscribing the same, and the remainder in
738 installments not exceeding twenty (20) per centum at any one time, as ordered by board of directors."
Q. Will you state who the first officers and directors of the company were—under the articles?
A. "The officers of said corporation shall be a president,
247 vice-president, secretary, treasurer, and land commissioner, to be elected annually by the board of directors." A. H. Barney was elected president, Jesse Hoyt vice-president, Charles T. Barney secretary and treasurer, H. W. Lamberton land commissioner.
739 Q. Will you also state the names of the first board of directors?
A. "The names of the first board of directors of said corporation are Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, A. H. Barney, N. C. Barney, Charles T. Barney, H. W. Lamberton, and Thomas Wilson, who shall hold their offices as such until their successors are elected."
(It is stipulated and agreed by the counsel for the respective parties that the answers to the three foregoing questions were taken directly from the orignal articles of incorporation without objection,
740 in order to avoid encumbering the records, and embodied in the evidence as if the original articles had been introduced.)
Q. Since the organization of the company, Mr. Barney, who has had possession of and been in control of the books and papers of the company?
A. I have.
Q. Are you acquainted with the assets of the company at the present time?
A. Yes, sir.
Q. Were you acquainted with the property it has acquired since
741 its incorporation?
A. Yes, sir.

[It is admitted by the pleadings in this case that the lands which the Government seeks to recover, a part of which was transferred by the Government to the State, by the State to the railroad company, and by the railroad company to the land company.]

248

Q. Now, can you tell us, Mr. Barney, how the land company came to purchase these lands and other lands situated in Minnesota, within the grant of the Winona & St. Peter Railroad Company, and what the consideration for the purchase was? 742

A. They purchasd them, and the stock issued by the company was delivered by it in payment for the land.

Q. As I understand you, the company was organized and issued its stock for $500,000?

A. The company was organized and issued its stock for $500,000; yes, sir.

Q. And with the stock the company purchased the interest of certain parties in the lands in controversy, together with other lands?

A. Yes, sir. 743

Q. Have you any record which shows that fact, Mr. Barney?

A. Yes, sir; the first and second pages of our journal show it.

(Mr. Tawney here offers in evidence the first and second pages of journal Winona & St. Peter Land Company.

Same received in evidence and marked Exhibit A.

It is stipulated that the notary may make a copy of pages one and two of said journal, so offered in evidence, and attach the same to the deposition of Mr. Barney and make it a part thereof, to the same effect as if said journal were introduced in evidence at the trial of this action.) 744

249

(Counsel for complainant objects to the introduction of Exhibit A as incompetent and irrelevant.)

Q. Now, Mr. Barney, was there, in addition to the journal entries, any agreement between the land company and D. N. Barney or any formal transfer of their interest in the lands embraced in the contract commonly known as the Barney contract with the Winona & St. Peter Land Company? 745

A. Yes, sir.

Q. Have you got that agreement or transfer?

A. Yes, sir.

Q. And is that the land the company delivered its stock in payment of?

A. Yes, sir.

(Mr. Tawney here offers in evidence the agreement or formal transfer.

Same received and marked Exhibit B. 746

It is stipulated that the notary may make a copy of the agreement above referred to, and marked Exhibit B, and attach the same to the deposition of Mr. C. T. Barney, and that it be received and used on the trial the same as if the original were offered in evidence.)

Q. You were one of the original incorporators of the Winona & St. Peter Land Company and by its articles made its secretary and treasurer?

A. Yes; I was.

747 Q. Was there any other property received by the land company in consideration of the stock which it delivered to D. N. Barney and his associates, outside of the lands embraced in the contract commonly known as the Barney contract?

250 A. None that I remember, outside of those stated in the journal.

(Objected to as not the best evidence, Mr. Tawney having already introduced in evidence pages one and two of the journal and stated that they contained the substance of the transactions.)

748 Q. Is it not a fact that there were contracts known as land contracts in addition to the land transferred or intended to be transferred to the land company as part of the consideration for the stock?

A. Those are stated in the journal.

Q. Are those the contracts referred to in the last item on page two, which has already been offered in evidence?

A. Yes, sir.

Q. Prior to the time of the organization of the Winona & St.
749 Peter Land Company, the railroad company conveyed to different persons a portion of the lands embraced in the Barney contract, had it not?

A. It had; yes, sir.

Q. Those lands had been conveyed at the request of D. N. Barney and his associates, as provided in the contract?

A. Yes, sir.

Q. Did the land company, after its organization, give the railroad any indemnity, and was it required by the railroad company to indemnify it against any loss it might sustain on account of these
750 preexisting contracts?

A. It did; yes, sir.

(Objected to as irrelevant, incompetent, and immaterial.)

Q. What was the form of that indemnity?

251 A. In the form of a bond of $100,000.

(Objected to as incompetent, and not the best evidence.)

Q. I notice on page 1 of journal, marked "Exhibit A," a refer-
751 ence to what is there designated the DeGraff contract. Will you kindly explain what interest the Winona & St. Peter Land Company acquired by reason of that transfer in the lands embraced in the DeGraff contract?

A. One-half interest, assuming at the same time an obligation to pay DeGraff his one-half of the collections already made.

(Objected to as incompetent, irrelevant, and immaterial, and not the best evidence.)

Q. Were the lands embraced in that contract part of the land
752 included in the grant of the Winona & St. Peter Railroad Company between Winona and Waseca?

A. They were.

Q. Since the organization of the land company, Mr. Barney, have you purchased any stock in addition to that you originally owned?

A. I have some fractional shares.

(Objected to as incompetent, irrelevant, and immaterial.

In order to avoid loss of time and the interposition of objection to each question that may be asked, it is understood and agreed that a general objection is interposed by counsel for the complainant to all questions and answers relating to the purchase, sale, or 753
transfer of any stock of the Winona & St. Peter Land Company since its organization, on the ground of their being incompetent and immaterial.)

252 Q. Have you acquired any through your father's estate?

A. I have; yes, sir.

Q. Have the other heirs of your father obtained any of the stock through his estate?

A. They have; yes, sir.

Q. As secretary of the company, can you state whether the 754
stock of the company has been sold and purchased from time to time?

A. Judging from the transfers, yes.

Q. So that the stockholders to-day represent others than those who were the original stockholders or the heirs of stockholders?

A. Yes, sir.

Q. Do you know what disposition was made of the stock originally owned by William G. Fargo?

A. Yes, sir; his interest was divided among his heirs, but there being fractional shares, they were bought and sold backwards and 755
forwards, so as to make a full share in one possession.

Q. Did the estate buy any stock from Squiers?

A. They bought one-third of a share from Squiers, who became entitled to it through the estate of his wife, who was a child of Fargo.

Q. Who owns that now?

A. I think the other heirs.

Q. Who do you mean by the other heirs?

A. The other heirs of Fargo; they bought it at the rate of $165 a share. 756

Cross-examination by Mr. THOMPSON:

Q. Mr. Barney, in your direct examination you testified that part of the consideration received by the land company for
253 the issuance of stock were land contracts. Were these contracts for land sold by the railroad company within the limits of the land grant prior to transfer?

A. They were.

Q. Do you know, Mr. Barney, how many miles of road were built by D. N. Barney and his associates?

A. No, sir; I do not. I was very young at the time. I think 757
it was one hundred and five miles of road.

Q. Do you not know, Mr. Barney, as a business man knows such things, that it was from Winona to Waseca?

A. No, sir; I did not know until Mr. Tawney said so to-day.

Redirect examination:

Q. After the making of the Barney contract, dated October 31, 1867, was there anything done by your father and his associates in 758

the work of constructing the road so as to earn the land embraced in that contract?

A. Yes, sir; as I remember we did not get the full amount of land we were entitled to for building the amount of railroad we turned over to the Winona & St. Peter Railroad Company, there not being sufficient acreage not preempted or otherwise occupied, so in order to get the full acreage we were entitled to for the con-
759 struction of the road transferred to the railroad company we had to build more. This additional railroad the purchasers of the property from us declined to build, and my father started out, and on very short notice, with a train load of rails, to build suffi-
254 cient of the road to entitle us to the whole amount of acreage we should have received for the mileage turned over to the Winona & St. Peter Railroad Company.

Q. As I understand your answer, then, Mr. Barney, the railroad company seemed to think that they had made a losing contract and
760 declined to go on with the building of the road, which would entitle D. N. Barney and his associates to the land which they agreed to convey to them, and in order to secure all that you were entitled to under the Barney contract, D. N. Barney and his associates, in addition to what they had done prior to the making of that contract, constructed more of the road, or had to construct more of the road, and that additional expenditure was not included in the contract?

A. Yes, sir; that is true.

761 Q. Do you know of your own knowledge that D. N. Barney and his associates expended any money in building any part of the Winona & St. Peter Railroad after the Barney contract was made, in order to secure the lands which the railroad company by that contract had agreed to convey to them?

A. Yes, sir. Of course now I am speaking from memory. My father had so little time to reach Minnesota with a train load of rails that he himself accompanied the train, in order to get there
762 in time. Any acreage we were entitled to for the construction of the road turned over to the Winona & St. Peter Railroad Company not "in place" they were compelled to give us by their contract with us within the "in place" limits.

255 Recross-examination:

What was the date of that extra work, Mr. Barney?

A. That I do not remember.

Q. How is it that you can testify, then, that it was after the exe-
763 cution of this contract?

A. Because I remember at the time of my father's death that this was spoken of as one of his most brilliant and energetic business operations.

Q. You know nothing of your own knowledge?

A. No, sir; I heard it from his associates.

Q. Then, your entire testimony regarding that transaction is derived from what you have heard from others?

A. Yes, sir.

Re-redirect examination:

Q. Mr. Barney, is it not the fact that you recollect that after the 764
contract was made your father accompanying the train that carried the material for doing this work to its destination?

A. I do not remember whether he told me as to the details of the train, but he did tell me that he was compelled to construct additional road in order to earn lands that we were entitled to.

Q. Do you recollect his going out to Minnesota for that purpose?

A. I was too young at the time, or away to college.

Re-recross examination: 765

Q. Your recollection of the transaction, Mr. Barney, depends on your recollection of what your father told you?

256 A. No, sir; I very distinctly remember he told me.

Q. All you know about that transaction is derived from statements made by him, or the statements of other persons connected with him?

A. Yes, sir.

Re-redirect examination: 766

Q. I will ask you, Mr. Barney, if it is not a fact that you have been intimately associated with the business of the Winona & St. Peter Land Company since its organization, and if you, by reason of that intimacy and by reason of your knowledge of the entries upon the books in your possession showing the transactions between the railroad company and D. N. Barney and his associates, have not a recollection of the fact of building some portion of this road after the making of the Barney contract, independent of what others have told you? 767

A. I should hardly like to say I had, but I have an impression that there was an entry of iron purchased after the road was turned over.

(Objected to as incompetent, irrelevant, and immaterial, and as an attempt to testify as to the contents of documents which are the best evidence.)

Q. Mr. Barney, prior to the commencement of this action, did you have any notice or information to the effect that the Government claimed any interest in the lands involved in this controversy?

A. None whatsoever. 768

(Objected to as incompetent, irrelevant, and immaterial.)

Q. Did you as an officer of the company ever receive any information or notice to that effect?

257 A. None whatsoever.

(Objected to as irrelevant and immaterial.)

Q. All your dealings in the stock of the Winona & St. Peter Land Company and the lands prior to the beginning of this suit were had in the full belief that the title to the lands obtained by the State from the General Government and conveyed by the State 769
to the railroad company and from it conveyed to the land company were a good and valid title?

A. Yes, sir.

(Objected to as incompetent, irrelevant, and immaterial.)

Q. And so far as you know, transactions of all the parties connected with the land company with reference to the stock and its assets were based on that belief, were they not?

A. They were; yes, sir.

770 (Same objection.)

Q. Then if by reason of this suit your company should lose the lands involved therein, the stockholders of the company would suffer an irreparable loss, would they not?

A. They would.

(Same objection.)

C. T. BARNEY.

Subscribed and sworn to before me Oct. 12, 1893.

[SEAL.] HENRY B. COCHEU,

771 *Notary Public, Kings County.*

Cert. filed, N. Y. Co.

258 EXHIBIT A.

D. N. Barney and associates, Dr., $51,651.70. To DeGraff contract.

772 Amount due A. DeGraff on this contract at date of April 20, 1876. This was a contract dated Sept. 22d, 1875, to give A. DeGraff the proceeds of the undivided half of 62,200 acres of lands. Up to the date of the formation of the land company April 20, 1876, there had been collected on sales of these 62,200 acres $33,037.40, one-half of which is due A. DeGraff $16,518.70

(For further particulars see contract on file.)

773 "Capital stock." For 10,000 ($50) shares of the Winona and St. Peter Land Company issued to D. N. Barney and associates in payment for all their property and assets in Minnesota turned over by them to the Winona and St. Peter Land Company, less their liabilities as above 500,000.00

D. N. Barney and associates, Cr., by bills receivable.

774 Apl. 20, 1876. Bal. due on Cutting note of $5,500 to Sprague in payment for Sprague's farm, which note was assigned to A. H. Barney by Sprague to settle

259 his indebtedness to associates' note $5,500.00

Payments on account:

Mch. 17, 1874	$650.00	
May 27, 1874	149.62	
Febry. 23, 1875	696.50	
Nov. 16, 1875	186.51	
775 April 11, 1876	298.50	
	1,981.13	
		3,518.87

By A. DeGraff. Apl. 20, 1876. Bal. owd. to associates by DeGraff at date, May 1, 1868 ..... 3,131.63

By A. H. Barney, or cash. Apl. 20, '76. Bal. in bank at this date. 24,520.82

776 By A. H. Barney. Apl. 20, '76. For amt. collected by A. H. Barney from Sprague, acct. Sprague's indebtedness to associates ... 2,847.48

By deferred sales. Bal. due on outstanding contracts at date of April 20, 1876 ..... 376,091.52

EXHIBIT B.

This indenture, made this eighteenth day of December, in the year one thousand eight hundred and seventy-six, between Angus Smith and Catharine E., his wife, of Milwaukee, State of Wisconsin; Benjamin P. Cheney and Elizabeth L., his wife, of Boston,

Massachusetts; William G. Fargo and Annie H., his wife, of Buffalo, New York; Jesse Hoyt and Helen M., his wife, Samuel N. Hoyt and Maria W., his wife, Alfred M. Hoyt and Rose E., his wife, Ashbel H. Barney and Susan T., his wife, Russell Sturgis and Sarah B., his wife, Newcomb C. Barney and Elizabeth S., his wife, Arthur L. Barney, Helen A. Barney; Walter S. Gurnee, junior, and Bell B., his wife, and Lucy L. Barney, all of the city of New York, and Newton H. Barney, of the same place, a minor, acting by his general guardian, Ashbel H. Barney, parties of the first part, and the Winona & St. Peter Land Company, of Winona, State of Minnesota, party of the second part,

777 260 778

Witnesseth, that the said parties of the first part, for and in consideration of ten thousand shares of the capital stock of the said party of the second part of the par value of fifty dollars each, to them assigned and delivered by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quitclaimed and for themselves, their heirs, executors, and administrators by these presents do grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, its successors and assigns forever all right, title, interest, dower, and right of dower, courtesy, and right of courtesy, property, possession, claim or demand as the said parties of the first part or either of them have or ought to have in and to all these lands and pieces and parcels of land situate in the State of Minnesota, mentioned and referred to in a certain contract or agreement made by and between Danford N. Barney, Jesse Hoyt and others of one part, and the Winona & St. Peter Railroad Company of the other part, which agreement bears date the 21st day of October, 1867, and are therein described in effect as follows:

779 780

Beginning at Winona, aforesaid, and from thence proceeding on each side of said railroad (the Winona & St. Peter Railroad) on a course running parallel therewith, and embracing each of the six, ten, fifteen, and 20 mile limits of the Congressional land grants, and in proceeding taking all lands within each and all of said limits which shall be received by said company (the Winona & St. Peter Railroad) under said acts of Congress or either of them, it being understood that on each side of said railroad an uniform line of advance westwardly, embracing all the lands in said limits, shall be maintained as nearly as may be until as many acres shall have been selected and taken as the said company shall have received for the construction of the portion of said railroad, now completed, which is estimated to be one hundred and five miles thereof, extending northerly and westerly from Winona, aforesaid; it being understood that the said parties of the first part (said Barney, Hoyt, and others) shall receive as many acres as shall be received by the party of the second part (the Winona & St. Peter Railroad Company) for the construction of said one hundred and five miles, but reserving, excepting, and deducting from said number of acres all lands necessary for the

261 781 782

track of said railroad, of the right of way or depots or depot grounds or other purposes incidental to the operations of said railroad.

It being the true meaning and intent of the said parties of the first part hereto to release, remise, and quitclaim to the said party
783 of the second part all their right, title, and interest in and to all of the above-mentioned and described lands which remained unsold on the 20th day of April, 1876.

And the said parties of the first part for the consideration
262 aforesaid hath agreed to assign and set over to the said party of the second part all their right, title, and interest in and to any and all outstanding contracts for the sale of said lands or any part thereof and the sums or amounts due thereon and on each and every of them, and have and do hereby assign and set over to the said
784 party of the second part all their right, title, and interest in and to all outstanding contracts for the sale of said lands or any part thereof, and all sum and sums which became and were due thereon on the 20th day of April, 1876, amounting in the aggregate to the estimated sum of three hundred and seventy-six thousand and ninety-one dollars and fifty-two cents.

To have and to hold all and singular the said premises and assigned contracts and sums due thereon, as aforesaid, unto the said
785 party of the second part, its successors and assigns, to its and their only proper use and behoof forever, so that neither said parties of first part or either of them or any other person in their names shall or will hereafter claim or demand any right or title to the premises or things assigned or any part thereof, but they and every of them shall by these presents be excluded and barred forever.

And whereas Ashbel H. Barney, one of the above-named parties of the first part, holds the title in his own name to certain portions of the land embraced in the above description, known as town or
786 village lots, but which in fact is held in trust by him for all the parties of the first part to this conveyance, and which said town or village lots are for the consideration aforesaid to be released to the said party of the second part by the said parties of the first part.

263 Now, therefore, in consideration of the premises, we, the said parties of the first part, except the said Ashbel H. Barney, do hereby require the said Ashbel H. Barney to remise and release by proper deed or deeds all our right, title, and interest in and to said town or village lots, and for so doing this shall be a
787 sufficient warrant and authority.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of

John L. Smith	ANGUS SMITH.	[SEAL.]
	CATHERINE E. SMITH.	[SEAL.]
Elizabeth M. Ganghran	BENJAMIN P. CHENEY.	[SEAL.]
	ELIZABETH S. CHENEY.	[SEAL.]
Alex Holland, as to W. G. F.	WM. G. FARGO.	[SEAL.]
Virginia Sage	ANNIE H. FARGO.	[SEAL.]
James W. Jackson	HELEN M. HOYT.	[SEAL.] 788
	JESSE HOYT.	[SEAL.]
James K. Raymond	SAMUEL M. HOYT.	[SEAL.]
	MARIA W. HOYT.	[SEAL.]
Theodore J. Husted.....	ROSE E. HOYT.	[SEAL.]
	ALFRED M. HOYT.	[SEAL.]
H. T. Barney	ASHBEL H. BARNEY.	[SEAL.]
	SUSAN T. BARNEY.	[SEAL.]
	NEWTON H. BARNEY, by A. H. BARNEY, guardian.	[SEAL.]
Jno. C. Connor, jr	W. S. GURNEE, Jr.	[SEAL.]
	B. B. GURNEE.	[SEAL.]
C. H. Raymond	LUCY L. BARNEY.	[SEAL.]
	N. C. BARNEY.	[SEAL.]
	ELIZABETH S. BARNEY.	[SEAL.] 789
Jeannie E. Curtiss	RUSSELL STURGIS.	[SEAL.]
	SARAH BARNEY STURGIS.	[SEAL.]

264 ALFRED M. HOYT, a witness called on behalf of the defense, being first duly affirmed under the pains and penalties of perjury, to speak to the truth, the whole truth, and nothing but the truth, testified as follows:

By Mr. TAWNEY:

Q. Mr. Hoyt, your full name is Alfred M. Hoyt? 790

A. Alfred M. Hoyt.

Q. Do you reside in New York City?

A. Yes, sir.

Q. Have resided here how long?

A. Over twenty-one years.

Q. You are acquainted with the lands involved in this controversy, and embraced in the land grant of the Winona & St. Peter Railroad Company?

A. Yes, sir.

Q. You were one of the original parties to the contract between 791 the Winona & St. Peter Railroad Company and D. N. Barney and his associates, were you not?

A. Yes, sir.

Q. Your brother, Jesse Hoyt, was also interested in the same property?

A. Yes, sir.

Q. Is he still living?

A. He is dead.

Q. At the time of his death, Mr. Hoyt, did he hold any stock of the Winona & St. Peter Land Company? 792

A. Yes, sir.
Q. What amount?
A. About eighteen hundred and thirty-three shares, I think yes, 1,833 shares.
265 Q. Who was the executor of his estate?
A. Samuel N. Hoyt, Alfred M. Hoyt, J. W. Jackson.
Q. How was that stock disposed of by the executors of his estate?
793 A. It was sold.
Q. Sold for cash, was it?
A. Sold for cash.
Q. Public or private sale?
A. Private sale.
Q. When was it sold?
A. Sold in April; I should think April 20th, 21st, 1893.
Q. What did the estate realize on that stock?
A. Sold at $75 a share.
794 (Last five questions objected to on the ground of irrelevancy.)
Q. Who now holds the stock, if you know, Mr. Hoyt?
A. I do not know as I can tell who owns all that stock now.
(Counsel for the complainant enters a general objection to all questions and answers tending to show the disposition of any stock of the Winona & St. Peter Land Company since its organization, on the ground of the irrelevancy, incompetency, and immateriality of all such evidence to the issues of this action.)
795 Q. At the time of the sale of that stock, or at any time since the organization of the Winona & St. Peter Land Company, did you have any notice or knowledge of the fact that the Government claimed an interest in the lands involved in this suit?
266 A. No, sir.
(Objected to as incompetent, irrelevant, and immaterial.)
Q. Who was the stock owned by your brother's estate sold to?
796 A. Sold to a gentleman of the name of J. O. Baker.
Q. He resides in New York City?
A. He resides in the city of Newark, N. J.
Q. Do you know whether the stock of the Winona & St. Peter Land Company, since its organization, has been sold and transferred back and forth to different parties?
A. Yes, sir.
Q. It has?
A. Yes, sir.
Q. How do you know that stock of the company has been sold and transferred?
797 A. As vice-president of the company I have signed various stock certificates from time to time.
(Same objection.)
Q. Do you know whether the stock held by any other of the original stockholders besides your brother has been sold and transferred to other parties.
A. Yes, sir; judging from the transfers of the stock.

Q. Do you know anything about the disposition that was made of Mr. Fargo's stock at the time of his death?

A. Not of my own knowledge. Only from information. 798

Q. Mr. Hoyt, as vice-president of the company, have you at any time since its organization known, or have you had any reasons to know, that the title of lands which the company obtained under
267 and by virtue of the agreement which has been offered in evidence and attached to the evidence of Mr. Barney, marked "Exhibit B," was questioned or assailed by the Government for any reason whatever?

A. No, sir.

(Same objection.) 799

Q. Have you at all times since the organization of the land company been connected with it either as a stockholder or an officer?

A. Yes, sir.

Q. During that time have you and your associates in the company acted upon the full belief that the title to the lands which the company obtained from D. N. Barney and his associates was a valid, perfect title?

A. Yes, sir.

(Same objection.)

Q. And all transfers of stock were made with the same belief 800 and under the same impression, were they not?

A. Yes, sir.

(Same objection.)

Q. Have you bought any stock yourself since the orginal organization of the company?

A. I have.

Q. How much, if you can state?

A. Five or six hundred shares altogether.

Q. Have you sold any stock that you purchased?

A. No, sir. 801

Q. State what induced you to purchase the stock.

A. I thought it was one of the best operations financially
268 that I could go into as an investment on account of the lands that the company still owned and its contracts receivable.

(Same objection.)

Q. At the time you purchased this stock, did you have any information that led you to believe that there was any doubt about the title of the company?

A. No, sir. I have had no doubt from my own knowledge and 802 information and examination that the assets of the company were in any way different than they were represented on the books of the company.

Q. And among those assets were the lands that the Government now seeks to recover in this suit?

A. They were either represented as lands or contracts receivable. May have been sold. I don't know that.

Q. How would it affect the interests of the stockholders of this company, Mr. Hoyt, should the Government succeed in its attempt 803 to cancel the certificates by which the land was conveyed from the General Government to the State?

A. In my opinion would reduce the value of the assets of the company 25 per cent—the value of the stock of the company twenty-five per cent.

Q. And to that extent destroy the interests of the stockholders, would it not?

A. Yes, sir.

Cross-examination by Mr. THOMPSON:

804 Q. Mr. Hoyt, were you one of the parties to this so-called Barney contract, copy of which is attached to the stipulation?

A. Yes, sir.

269 Q. The full consideration to the agreement is stated in it?

A. I think it is. To the best of my knowledge and belief, the consideration is expressed in that agreement.

Q. Were you one of the parties, Mr. Hoyt, who had advanced
805 money to the railroad company for its construction?

A. Yes, sir; was one of the original parties who advanced money to the railroad.

Q. The date of this contract, Mr. Hoyt, is the 31st day of October, 1867. How much of the work had been completed at that date?

A. I do not know; don't recollect.

Q. As a matter of fact, Mr. Hoyt, was any work done in the way of railroad building after 1867?

A. I cannot tell you. Cannot remember the dates as to the con-
806 struction or nonconstruction of that road.

Redirect examination:

Q. Mr. Hoyt, do you know whether the contract specifies the full consideration—the contract attached to the stipulation known as the Barney contr'ct—for the transfer of the lands from the railroad company to D. N. Barney and his associates?

A. I do not know.

Recross-examination:

807 Q. What is your recollection?

A. I do not remember whether it expresses the full consideration or does not.

ALFRED M. HOYT.

270 Subscribed and sworn to before me Sept. 30, 1893.

[NOTARIAL SEAL.] HENRY B. COCHEU,
Notary Public, Kings County.

808 Cert. filed N. Y. Co.

NEWCOMB C. BARNEY, a wit'ess called on behalf of the defendants, being first duly sworn, testifies as follows:

By Mr. TAWNEY:

Q. Your name is N. C. Barney?

A. Yes, sir.

Q. You reside here in New York City?

809 A. Yes, sir.

Q. Are you the son of one of the parties to the contract between D. N. Barney and his associates and the Winona & St. Peter Railroad Company executed Aug. 31, 1867?

A. I am a son of Mr. D. N. Barney. I cannot say anything about that contract.

Q. Is your father still living?

A. No.

Q. At the time of his death did he own any stock of the Winona & St. Peter Land Company?

A. I cannot say. 810

Q. Do you know whether any stock of the Winona & St. Peter Land Company was obtained by the heirs of your father's estate?

A. Yes, sir; I know that.

271 Q. Did the heirs obtain it by purchase or by inheritance?

A. By inheritance.

Q. How was it divided, if you know?

A. I do not know, except I always supposed that the heirs had an equal division—an equal proportion. 811

Q. You do not know, then, whether any of the heirs released any portion of the property belonging to your father's estate, and took in lieu thereof the stock of the Winona & St. Peter Land Company?

A. I have no recollection of any such transaction.

Q. Your father was married the second time?

A. Yes.

Q. How many children did he have living at the time of his death, by his first wife, and how many by his second wife? 812

A. Six.

(Objected to as immaterial, irrelevant, and incompetent.)

Q. How many by his first wife, and how many by his second?

A. Evenly divided.

Q. Three each?

A. Three each.

Q. Do you know whether in the division of your father's estate his wife obtained any of the stock of the Winona & St. Peter Land Company? 813

A. I do not know. I know by conjecture.

(Same objection).

Q. Have you any recollection?

N. C. BARNEY.

272 Subscribed and sworn to before me, Sept. 30, 1893.

[NOTARIAL SEAL.] HENRY B. COCHEU,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

STATE OF NEW YORK, 814
County of New York, ss:

Be it known that I took the annexed depositions of Charles T. Barney, Alfred M. Hoyt, and N. C. Barney pursuant to the annexed notice; that I was then and there a notary public in and

815 for said county and State; that I exercised the power of that office in taking such depositions; that by virtue thereof I was then and there authorized to administer an oath; that each witness, before testifying, was duly sworn to testify the whole truth and nothing but the truth relative to the cause specified in the annexed notice; that the testimony of each witness was correctly read over to him by me before he signed the same; that the examination was conducted on behalf of the plaintiff by Charles T. Thompson; that the examination was conducted on behalf of defendant by J. A. Tawney.

816 Witness my hand and seal this 29th day of September, 1893.

[NOTARIAL SEAL.] HENRY B. COCHEU,
Notary Public, Kings Co.

Certificate filed New York Co.

273 The following certificate and copies of papers therein referred to were introduced on behalf of the defendant, The Winona & St. Peter Railroad Company.

DEPARTMENT OF THE INTERIOR,
817 GENERAL LAND OFFICE,
Washington, D. C., January, 1894.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed papers are copies of letters on file and of record in this office, and that each of said copies is a true and literal exemplification of the original letter or record to which it relates, to wit:

1. Dated June 21, 1864. Hon. Horace Thompson to governor of Minnesota.

2. Dated June 22, 1864. Governor of Minnesota to Commis-
818 sioner of the General Land Office.

3. Dated July 7, 1864. Commissioner General Land Office to the register and receiver at St. Peter, Minnesota.

4. Dated July 7, 1864. Commissioner General Land Office to the governor of Minnesota.

5. Dated July 12, 1864. Commissioner General Land Office to the register and receiver at Greenleaf, Minnesota.

6. Dated July 11, 1866. Copy of letter from Hon. I. Donnelly to the Secretary of the Interior.

819 7. Dated July 11, 1866. Secretary of Interior to Commissioner General Land Office enclosing copy of Donnelly's letter.

8. Dated July 21, 1857. Commissioner General Land Office to governor Minnesota.

274 9. Dated August 10, 1864. Commissioner General Land Office to register and receiver at St. Peter, Minnesota.

10. Dated March 30, 1858. Commissioner General Land Office to Hon. James Shields.

820 In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] S. W. LAMOREUX,
Commissioner of General Land Office.

(1) OFFICE OF THE MINNESOTA VALLEY R. R. CO.,
Saint Paul, June 21, 1864.

Governor STEPHEN MILLER,
Saint Paul.

MY DEAR SIR: The accompanying map will indicate the line 821
of the Minnesota Valley Railroad, with the 6, 15, and 20 mile limits of the two Congressional land grants. The road has been located to a point some twenty miles, more or less, beyond Mankato, as indicated by certified maps filed in the Land Office at Washington. Beyond that point no permanent location has been made. The preliminary map accompanying will designate the proposed route, and is thought to be substantially correct. The company are about to make a permanent location from Mankato to the State line, in the direction of Sioux City, the proposed terminus of 822
the line, and will be ready to file location maps the coming fall.

Owing to Indian rumors and other causes, it is impossible
275 for the company to complete the location before October of the present year. In the meantime, the road, already shorn of most of its lands between St. Paul and Mankato, is losing rapidly beyond that point where the deficiency must be made up, and also within the additional limits of 15 and 20 miles this side. 823

Speculators, in anticipation of the road, are rapidly locating college scrip and land warrants on the most valuable lands. It is of vital interest to the road, and consequently to the State, that the remaining lands should be reserved along the whole line and within all the limits, in order that the full complement of 10 sections to the mile may be obtained.

The company will be ready to file certified maps of the whole road in October.

To preserve the lands in the meantime, we respectfully suggest that your excellency will file this preliminary map at the General Land Office, and in behalf of the State request the Commissioner 824
to withdraw temporarily from sale or preemption lands along the whole line of the road, and so notify the local land offices with the least possible delay.

I am, very respectfully, yours,

HORACE THOMPSON,
Pres't Minnesota Valley R. R. Co.

(2) STATE OF MINNESOTA, EXECUTIVE DEPARTMENT,
St. Paul, June 22, 1864. 825

Hon. J. M. EDMUNDS,
Com'r Gen'l Land Office, Washington, D. C.

SIR: I respectfully enclose a communication of the 21st
276 inst. from Horace Thompson, esq., president of the Minnesota Valley Railroad Company, together with a map therein referred to.

I respectfully ask that said preliminary map may be filed on behalf of the State of Minnesota, and request that the lands therein

indicated be temporarily withdrawn along the whole line of the
826 road, and the local land officers be promptly notified to that effect.

I am, resp'ly, your obd't serv't,

STEPHEN MILLER,
Governor, Minn.

[Endorsement.]

G 39291.

Gov. of Minnesota, St. Paul, June 22, '64, encloses a letter from Horace Thompson, with a map of the Minnesota Valley Rail, and asks that the lands be temporarily withdrawn from sale on the whole line of said road.

R.

827 Notified of withdrawal July 7, 1864.

BLOSS.

JUNE 29, '64.

(3) DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 7, '64.

REGISTER AND RECEIVER, *St. Peter, Minn.*

GENTLEMEN: By the act approved May 12, 1864, 7th section, a grant of additional lands was made to Minnesota to aid in the
828 construction of the railroad "from St. Paul and St. Anthony, via Minneapolis, to the southern boundary of the Territory" known as the Southern Minnesota. The Secretary of the Interior having ordered, under date of the 2d inst., a withdrawal of lands
277 on account of said road, you will therefore suspend from settlement, location, and sale a body of lands about 20 miles in width, as indicated on the enclosed diagram B. Acknowledge the date of the receipt of this.

Very respectfully, your obdt. servt.,

829 J. M. EDMUNDS, *Commissioner.*

(4) DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 7, 1864.

His Excellency the GOVERNOR OF MINNESOTA, *St. Paul.*

SIR: Your letter of the 22d inst., enclosing a letter from the president of the Minnesota Valley (Southern Minnesota) Railroad, with a map for a withdrawal of lands for said road, was referred
830 to the Secretary of the Interior. He having ordered the withdrawal, the necessary instructions have this day been issued to the register and receiver at Minneapolis, St. Peter, and Winnebago City.

Very respectfully, your obdt. servt.,

J. M. EDMUNDS, *Commissioner.*

(5) DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 12, 1866.

REGISTER AND RECEIVER, *Greenleaf, Minn.* 831

GENTLEMEN: I enclose herewith a diagram showing the designated line of route and the 10 and 20 mile limits of the "Hastings, Minnesota River and Red River of the North Railroad," for
278 which a grant of lands is made to the State of Minnesota by the act of Congress approved July 4, 1866.

The grant is for five alternate sections per mile, designated by odd numbers, with the right of indemnity for land disposed of, from odd sections within 20 miles of the road—excepting, however, from 832 the grant "any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatsoever," except the right of way where the title is in the U. S.

The even or reserve sections within the 10-mile limits are increased in price to $2.50 per acre, and can not be sold at private entry until after they have been first offered at that price. Preemption settlers, upon compliance with the law may, however, pay for such sections at the increased price, and 80 acres may be entered 833 under the homestead law.

In compliance with the instructions from the Secretary of the Interior of the 11th inst., you are hereby directed to withhold from sale and location, preemption settlement, and homestead entry both the odd and even sections within the 10-mile limits and the odd sections within the 20-mile limits, as herewith mentioned.

The odd sections within both limits are absolutely withdrawn; and the even sections will only be subject to settlement and entry 834 under the preemption and homestead laws at $2.50 per acre—except in cases where legal, inceptive rights had accrued to settlers under the preemption laws prior to the receipt of this order by
279 you. In such cases the settler, by the decision of the Secretary of the Interior of the 22nd ult., will, upon compliance with that law, be allowed to pay for his claim at $1.25 per acre.

This grant excepts from its provisions any lands reserved or granted prior to its passage, giving only the "right of way" where 835 the title still remains in the U. S. Therefore all odd sections of land within the limits of this road, which fall within the limits of any antecedent grant or reservation are excepted and excluded.

Diagrams showing the limits of prior grants for railroads are now in your office.

This order will take effect from the date of its reception at your office, and you will advise me of the precise time it may be received by you.

Very respectfully, your obt. servt.,

J. M. EDMUNDS, *Commissioner.* 836

(6) [Enclosure.]

WASHINGTON, *July 11, 1866.*

Hon. JAMES HARLAN,
Secretary of the Interior, Washington, D. C.

DEAR SIR: Accompanying this I beg leave to file a map giving a preliminary location of the "Hastings, Minnesota River and Red River of the North Railroad," to which a grant of land has been made by Congress by an act entitled "An act making an additional grant of lands to the State of Minnesota to aid in the con-
837 struction of railroads in said State," which passed the Senate July 2d, 1866, and has since been approved by the President. The route of the road is described in the act as "from Hastings, through the counties of Dakota, Scott, Carver, and McLeod
280 to the western line of the State," and the route designated in the accompanying map is in accordance therewith.

I would respectfully ask that you will order the odd sections of public land contained within the twenty-mile limits of said grant
838 to be withdrawn from location, entry, or sale for the period of twelve months from this day, so that a survey can be made of the line of the road.

I have the honor to be, very truly & respct., yours,
(Signed) I. DONNELLY.

[Endorsement.]

WASHINGTON, *July 11th 1866.*

I. DONNELLY, *M. C.*

Transmits map showing preliminary location of the "Hastings,
839 Minnesota River and Red River of the North Railroad," and asks that the lands within the twenty-mile limits be withdrawn from location, entry, or sale for the period of 12 months.

L. G. R. R., Vol 1, 80.

(7) DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 11th, 1866.

840 SIR: Enclosed please find a letter from Hon. I. Donnelly transmitting for file in this Department a map showing preliminary location of the Hastings, Minnesota River and Red River of the North Railroad," with the request that lands be withdrawn on the line of said road.

281 You will please cause the lands to be withdrawn, and after copying return the map and letter accompanying.

I am, sir, very respectfully, your ob't serv't,

JAS. HARLAN, *Secretary.*

Hon. J. M. EDMUNDS,
841 *Commissioner of the Gen. Land* Land *Office.*

[Endorsement.]

G 82,275.

Sec. of the Interior, July 11th, 1866, encloses letter from Hon. I. Donnelly, transmitting a map of the "Hastings, Minnesota River and Red River of the North Railroad," etc., p. 81.

Instructions issued to St. Peter and Greenleaf, & Mr. Donnelly & the Secretary so advised.

BLOSS.

JULY 12, 1866.

(8) GENERAL LAND OFFICE, 842
July 21st, 1857.

His Excellency SAMUEL MEDARY,
Governor of Minnesota.

SIR: I have the honor to inform you that in pursuance of the act entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3d, 1857 (U. S. Laws for 1857, p. 195), telegraphic dispatches were sent from this office, on 843
the 7th of March last, to the several land offices in the Territory of Minnesota, withdrawing from sale and location all lands which would fall within the probable limits of selection, according
282 to the best information in our possession, which instructions were repeated by mail on the 9th April last.

It will be perceived that the grants are made direct to the Territory. It will therefore be necessary, in the adjustment of them, that we should have the cooperation of selecting agents duly appointed by the authorities of the Territory. The first thing to 844
be done is to transmit to this and the proper local offices separate connected maps of the several roads certified as the lines of route as "definitely fixed" by the respective companies under their seals, the dates of location to be verified by the affidavits of the engineers, and certified likewise by the governor under the seal of the Territory. As these maps will form the basis of the adjustment, they should show the connexion on a convenient scale—of, say, one inch to the mile—with the public surveys, and it will be sufficient if only one section on each side of the road be shown. On the receipt of 845
the maps of final location, the route of each road will be laid down on the township plats, as also the six and fifteen mile limits, and the lists prepared without delay of the vacant and sold lands within six miles, and such lands as are found not to fall within fifteen miles, the prescribed limits of selections, can at once be restored to market. As the title of the Territory will vest in the alternate sections within six miles of the roads from the date when the lines of route are "definitely fixed," and also that of the right of way, under the general law of 4th August, 1852, from the date of the 846
filing the maps of the same in this office, the importance of an early compliance with these requirements, as well as accuracy in showing the tracts cut by the routes, will be seen and appreciated.

Resp'y, y'r obt. servt.,

THOS. A. HENDRICKS,
Commissioner.

283 (9) DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Aug. 10, 1864.

REGISTER AND RECEIVER, *St. Peter, Minn.*

GENTLEMEN: I herewith enclose to you a diagram of the exten-
847 sion of the Winona & St. Peter Railroad, showing the 6 and 15 mile limits thereof. You will note these limits on your plats with lead pencil, and will be governed in dealing with the lands within the limits by the same rules and regulations as govern you in the disposal of lands along the other parts of this road; that is, from the date of the reception of this letter the odd sections within the limits are withdrawn from sale, preemption, or homestead entry; the even sections within the 6-mile limits are increased in price to $2.50 per acre.

The rights of preemptors are governed by the date of actual sur-
848 vey, or laying down of the line of the road, as designated on the map.

You will be pleased to acknowledge the date of the receipt of this letter.

Very respectfully, &c.,

JOS. S. WILSON, *Act'g Commissioner.*

(10) GENERAL LAND OFFICE,
March 30th, 1858.

849 Hon. JAS. SHIELDS, *Washington, D. C.*

SIR: The communication of Chas. Williams, esqr., herewith returned, submitted by you on the 6th inst., presents for answer nine enquiries relative to the railroad grant to Minnesota by
284 act of Congress of March 3d, 1857, which I have the honor to quote from and respond to as follows:

1st. "Will the branch road" "to the north line of the State of Iowa" "of the road from St. Paul & St. Anthony" "to the southern boundary of the Territory in the direction of the mouth of the
850 Big Sioux River" "be allowed to make up the deficiency of lands that arise within six miles of said branch from lands on the line of the trunk road, in accordance with the act of the Territorial legislature & Co." Answer: "The selections of the branch road, in lieu of the lands disposed of within the six-miles limits of the same must be made from the alternate odd numbered sections outside of six and within fifteen miles of the line of route of said branch and not from the lands on the line of the main road.

851 2d. "In making up the deficiency that arises within the six-miles limits on the branch, can the agent appointed by the governor to select the lands to make up said deficiency select them anywhere on the odd sections outside of six and within fifteen miles upon the branch or trunk?"

Answer. The selections to be made in lieu of lands disposed of within the six-miles limits of the branch must be made from the odd numbered sections nearest to those limits and within fifteen miles of the line of route of said branch.

3d. "May lands upon the branch & trunk be applied indiscriminately to the building of the branch & trunk?" Answer. The law declared "that the lands hereby granted for and on account of said road and branches, severally, shall be exclusively 852
285 applied in the construction of that road, for and on account of which such lands are hereby granted," "and the same shall be applied to no other purpose whatever." In the opinion of this office these terms require the lands allotted to the road to be exclusively applied to the road and those to the branch to be applied to the branch. 853

4th. "Where the six and fifteen mile lines merely cut or touch odd sections will railroad rights attach to them; that is, if a fractional part of an odd section is included within railroad limits, will railroad rights attach to the whole section? If they do not attach to the whole section, to how much do they attach?" Answer: When the limit lines merely touch the lines of the legal subdivisions, railroad rights will not attach to such subdivisions; but where the railroad limits actually cut a subdivision, and the greater part of such subdivision is within the limits of the road, the railroad 854
grant will attach to and embrace all of such subdivision, but if the greater part of such subdivision is outside of the limits then no part of such subdivision is held as embraced in the grant.

5th. "How much can a railroad line be changed after first location and the selection of lands without forfeiting the lands to which R. R. rights attach by the first location?" Answer: When the line of route of a R. R. shall have been "definitely fixed" and the duly verified maps showing that line, in connection with the public surveys, filed and accepted, this office can recognize no 855
material change in the route nor depart in its adjustment from the map of such definite location, although we will take no heed of any inconsiderable deflection or modification that the company
286 may find necessary to make, it being understood that neither our adjustment nor the individual adverse interests are to be thereby affected.

6th. "Where two land-grant roads cross or approach within fifteen miles of each other, how are the lands to be apportioned?" Answer: Where roads intersect each other, the lands inuring under 856
the grant within the limits common to each road will be certified to the State for the benefit of both jointly.

7th. "Does the Department decide that R. R. rights attach to vacant odd sections within six miles the moment the stakes are driven and the line of route definitely fixed?" Answer: The R. R. grant will attach and take the lands in place, from the date of the "definite location," and that is when the line of route shall have been surveyed, actually staked off and fixed on the face of the earth.

8th. "Will preemptions on odd sections within fifteen miles of 857
railroads be cancelled, that have been predicated upon settlement made during the operation of the four-month order to the local officers, not to receive declaratory statements on lands upon odd sections, within fifteen miles of railroad routes?" Answer: All preemptions, on lands withdrawn for railroad purposes in Minne-

sota Territory, where the claims are based upon settlements made during the period of four months absolute withdrawal in pursuance to the instructions to the district officers, dated 22d June, 1857,
858 will be cancelled.

9th. "When a claimant neglects to file his declaratory statement within three months after the date of his settlement, will railroad rights intervene and attach to the lands; will preemptions
287 made pursuant to such claims be cancelled?" Answer: When settlements on railroad sections within the six or fifteen miles limits are or have been made subsequent to the withdrawal of the lands for railroad purposes, and the parties fail or have failed of their own accord, without any obstruction or interference on the part of the Government, to file declaratory statements within the time prescribed by law, their entries will be void and cancelled.

Very respectfully, yr. obt. servt.,

THOS. A. HENDRICKS, *Commissioner.*

The foregoing certificate and papers attached thereto were offered and received in evidence, subject to the objection of the complainant that the same, and each and every thereof, were incompetent, immaterial, and irrelevant.

288 The defendant, The Winona & St. Peter Land Company, then offered in evidence in its behalf the following copies of records in the case of A. H. Barney and others against The Winona & St. Peter Railroad Company:

862 State of Minnesota, Blue Earth County, district court, sixth judicial district.

ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith, and Benjamin P. Cheney

against

THE WINONA AND ST. PETER RAILROAD COM-
863 pany.

Complaint.

For complaint in this action the plaintiffs respectfully show to the court that the defendant is a corporation duly incorporated by and under the laws of the State of Minnesota, and established and doing business in the State of Minnesota.

That heretofore, to wit, on the 21st day of October, one thousand
864 eight hundred and sixty-seven, the contract and agreement which is hereto attached and marked Exhibit A and made a part of this complaint was, upon sufficient consideration therein expressed,
289 duly made and entered into by and between Danford N. Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, Charles F. Latham, Ashbel H. Barney, Samuel N. Hoyt, and Alfred M. Hoyt, as parties of the first part, all of

said persons, except Danford N. Barney and Charles F. Latham, being plaintiffs named in this complaint and the defendant, the 865
Winona & St. Peter Railroad Company, as party of the second part.

That in consideration of the indebtedness therein stated of the said defendant to said parties of the first part to said agreement, and in full payment, satisfaction and discharge thereof, the defendant, in and by said contract, which said contract was in writing and signed and duly executed by all of said parties, undertook, promised, and agreed to and with said parties of the first part thereto, hereinbefore named, to sell and convey to said parties as many acres of land theretofore granted by Congress to the State of Min- 866
nesota as the defendant should receive from the said State by reason of the construction of the portion of the Winona and St. Peter Railroad theretofore constructed, to wit, one hundred and five miles thereof, extending westerly from Winona, excepting and reserving, nevertheless, any and all parts and parcels of such lands, (if any such there be) which may be necessary for the track of said railroad, or the right of way, or any depot or depot grounds thereof, or any other purpose incidental to the operation of said railroad, 867
constructed or to be constructed, or any part thereof. Which said lands thereinbefore agreed to be sold the defendant in and by said
contract and for said consideration, undertook, promised,
290 and agreed to and with said parties of the first part thereto
to convey to said parties of the first part thereto, or as they in writing should direct, whenever and as soon as said defendant should obtain the title thereto under certain acts of Congress therein referred to.

And it was further agreed in and by said contract by the parties 868
thereto that the lands to be conveyed as aforesaid should be selected as follows: Beginning at Winona aforesaid, and from thence proceeding on each side of said railroad on a course running parallel therewith, and embracing each of the six, ten, fifteen, and twenty mile limits of the Congressional land grants therein referred to, and, in proceeding, taking all lands within each and all of said limits, which shall be received by the said defendant under said acts of Congress, or either of them, in being understood that on each side of said railroad an uniform line of advance westwardly, 869
embracing all the lands in said limits, shall be maintained as nearly as may be, until as many acres shall have been selected and taken as the said company shall have received for the construction of said railroad, then completed, which is estimated at one hundred and five miles thereof, extending northerly and westerly from Winona aforesaid, it being understood and agreed in and by said contract that the said parties of the first part thereto should receive as many acres as should be received by the defendant for the construction of said one hundred and five miles, or so much thereof as was then 870
constructed, notwithstanding that under said act of Congress the said lands are certified only upon the completion of sections of not
less than ten miles of railroad; but it reserving, excepting, and
291 deducting from the said number of acres all lands necessary for the track of said railroad, or the right of way, or depot,

or depot grounds, or other purposes incidental to the operation of said railroad; and, in consideration of the premises, it was further agreed by the party of the second part thereto, the defendant
871 herein, with the said parties of the first part thereto, that the said defendant would acquire the title of said lands as fast as it might be permitted to do so under said acts of Congress, and would release and convey to the said parties of the first part thereto, or to such person or persons, in such manner and from time to time as might be devised by the said parties of the first part, or their counsel, on the request of said parties of the first part, or a majority of them, and that said defendant would do any and every other act and thing necessary and proper to secure to the said parties of the first part thereto, said lands and every part and parcel thereof, and the pro-
872 ceeds thereof, if it should thereafter be determined that the same should be sold for the benefit of said parties of the first part to said contract by the defendant; and it was further agreed in and by said contract by the parties thereto that the title to said lands should be held by the defendant; and as some time was necessary to enable said parties of the first part to said contract to confer and agree upon the details in relation to the holding said title and the mode of disposing of said lands, this clause [it was stated in said con-
873 tract] is inserted to express the agreement of said parties in relation thereto.

And it was further recited in said contract that the number of acres of lands which said parties of the first part would be entitled to receive under said contract would be about six hundred thousand acres of land.

292 That since the making of said contract two of the parties of the first part thereto, to wit, Danford N. Barney and Charles F. Latham, have died, and the plaintiffs, Ashbel H. Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, Samuel N. Hoyt, and Alfred M. Hoyt, are the survivors of the
874 said parties of the first part to said contract; that the plaintiff, N. C. Barney, has succeeded to the interest of the said Danford N. Barney, and the plaintiff, Charles T. Barney, has been admitted by said parties of the first part as a partner therein.

That the said parties of the first part and the plaintiffs have well and truly performed and caused to be performed every agreement, matter, and thing, in and by said contract by them to be performed.

And the said plaintiffs aver that, as they are informed and
875 believe, the length of said railroad completed westwardly from Winona at the time said contract was made and entered into was one hundred and five miles, and the amount of lands which defendant was entitled to receive by reason of the construction thereof, and which the parties of the first part in said contract were and are entitled to have deeded to them, or by their direction, was and is five hundred and forty-four thousand acres, described as follows: Six sections, or thirty-eight hundred and forty acres of land per mile for the first fifty miles of said road, to wit, all the lands within
876 the six and fifteen mile limits of the Congressional grant referred to in said contract to the center line of sections two, eleven, four-

teen, twenty-three, twenty-six, and thirty-five, in township 106, range 14, running north and south through the city of Roch-
293 ester, in said State, making a total for said distance of one hundred and ninety-two thousand acres of land, and ten sections per mile, or sixty-four hundred acres, for the remainder of the distance specified in said contract, to wit, all the lands within the six, fifteen, ten, and twenty mile limits of the Congressional grant referred to in said contract, extending west to the west line 877
of sections three, ten, fifteen, twenty-two, and thirty-four of the tier of townships in range thirty-nine, according to the United States survey, making a total for said last-named distance of three hundred and fifty-two thousand acres of land, and the entire aggregate of lands claimed by the plaintiffs under said contract five hundred and forty-four thousand acres of land, to be taken as provided in said contract. A more particular description of said lands the plaintiffs are unable to give, but aver that the defendant has the lists and deeds of said lands and descriptions thereof by 878
Government subdivisions in its possession.

And plaintiffs pray that it may be required to furnish such descriptions and to produce such lists and deeds; to all of which plaintiffs crave leave to refer when the same shall be produced in court.

That said lands are of the average value of ten dollars per acre.

That the defendant has actually, before the commencement of this action, received from the State of Minnesota, by reason of the 879
construction of said Winona and St. Peter Railroad, four hundred and seventy-six thousand and ninety-five and five one-hundredths acres of the lands agreed to be conveyed to the parties of the first part in and by said contract.

294 That the remainder of said five hundred and forty-four thousand acres the defendant has become entitled to receive from said State whenever it chooses to apply for the same; and the plaintiffs aver that the defendant has violated said contract in this, that it has not acquired the title of the remainder of said lands as 880
fast as it is and has been permitted to do so under the acts of Congress referred to in said contract, but has without just cause, and with the intent to injure the plaintiffs and deprive them of the title thereto, omitted and neglected, and still does omit and neglect, although often requested before the commencement of this action, to apply for the same, or to acquire the title thereto.

That the description of said lands, to which it has omitted to acquire title and which it agreed to convey pursuant to said con- 881
tract, is unknown to plaintiffs, but is known to defendant, and plaintiffs pray that it be required to disclose the same.

And plaintiffs further allege that prior to the commencement of this action, the defendant, at the request of the plaintiffs, conveyed and released to The Winona and St. Peter Land Company, a corporation duly organized under the laws of the State of Minnesota, two hundred and sixty-seven thousand seven hundred and fifty-four and ninety-three one-half one-hundredths acres of said land agreed to be conveyed, under and by virtue of said contract, for a 882

full description of which the plaintiffs crave leave to refer to said deed when the same shall be produced in evidence in this case; and the various other parties, at the request of plaintiffs, forty-
295 nine thousand six hundred and six and twenty-five one-hundredths acres, a particular description of which plaintiffs are unable to give, but they aver that defendant has a record of.

That the defendant has never, although often requested, conveyed to the plaintiffs or to the parties of the first part to said contract,
883 or to any one at their request, or that of a majority of them, any further, or other, or different lands than as already stated.

That pursuant to a clause of said contract already set out, the defendant has retained, until the demand herein set out, the title to said lands, and has sold and disposed of considerable quantities thereof to parties other than the parties to said contract, or the plaintiffs, or said Winona and St. Peter Land Company, and has received and appropriated the proceeds thereof, the precise amount or description thereof the plaintiffs are ignorant of, and are unable
884 to specifically set forth, but pray that the defendant may disclose in its answer the number of acres so sold, and the character and amount of the consideration received therefor, and has by virtue of said contract become liable to account to and with the plaintiffs for the proceeds thereof.

That prior to the commencement of this action, and after the defendant had acquired title to all of said lands to which the defendant has acquired title as aforesaid, all of the survivors and all of the plaintiffs, in writing, directed and requested the defendant to
885 convey to the plaintiffs all of said lands contracted to be conveyed in and by said contract, except such parts thereof as are necessary for the track of said railroad, or the right of way, or any depot or depot grounds thereof, or any other purpose incidental to the operation of said railroad or any part thereof; and except
296 such as the defendant has already disposed of pursuant to said contract for the benefit of said parties of the first part to said contract, as hereinbefore stated, and caused to be prepared by their counsel a deed of such lands, pursuant to said contract, to
886 the plaintiffs, and tendered it to the defendant, and demanded and requested its execution, and that defendant wholly refused to comply with any of said requests.

That the plaintiffs then requested, in writing, the defendant to convey to the plaintiffs such portion of said lands as it admitted its liability to convey, leaving the rights of the plaintiffs as to the remainder to be settled by the courts, but the defendant declined and refused to convey any of said lands to the plaintiffs unless they would accept a much less amount than is due to them under said contract in full satisfaction thereof.

887 That said parties of the first part also at the same time requested defendant to proceed and acquire the title to such of said lands as they had not acquired the title to, and convey the same to the plaintiffs, which defendant declined and refused to do, denying the right of plaintiffs to a conveyance thereof under and by virtue of said contract.

That plaintiffs have also, prior to the commencement of this action, requested the defendant to account with them for the amount of lands sold by defendant as aforesaid, which defendant also declined to do; and although by said demand its authority to hold the title 888
and dispose of any of said lands for the benefit of plaintiffs has ceased, defendant threatens to continue to sell and dispose of said lands and receive, control, and dispose of the securities for
297 the purchase money, all of which is in violation of the rights of the plaintiffs in the premises, and contrary to equity and good conscience.

Wherefore, plaintiffs pray the judgment of this court that the said defendant may be decreed to release and convey to the plain- 889
tiffs all the lands to which it has acquired title as aforesaid, and may be decreed, within some reasonable time to be fixed by the court, to apply for and acquire title to the remainder of said lands to which they are entitled by virtue of the construction of said railroad, and convey and release the same to the plaintiffs, or in default thereof to pay the plaintiffs the value thereof.

That the defendant may account for and pay over to the plaintiffs the proceeds of all lands so sold by the defendant as aforesaid, and deliver up and assign to the plaintiffs all contracts or securities for any payments remaining due on any of said sales, and that 890
a writ of injunction may be issued out of this honorable court restraining said defendant, during the pendency of this suit and until a final judgment therein, from selling or contracting to sell, or conveying or in any manner disposing of or incumbering any of said lands, or from disposing of, negotiating, or transferring any contracts or securities held by it as security for the purchase money of any lands heretofore sold by it.

And that the plaintiffs may have such other or further relief in the premises as the nature of the case may require, and as may be 891
just and equitable, besides the costs and disbursements of this action.

Faribault, Minn.

GORDON E. COLE,
Plaintiffs' Attorney.

298 STATE OF MINNESOTA,
County of Winona, ss:

H. W. Lamberton, being duly sworn, says that he is the agent for the plaintiffs in the above-entitled action; that all of said plaintiffs are absent from the county where their attorney resides; that 892
he has read the foregoing complaint and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

Subscribed and sworn to before me this day of June, A. D. 1878.

District court, ninth judicial district.

893 STATE OF MINNESOTA,
County of Blue Earth, ss:

ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, Wm. G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith, and Benj. P. Cheney
against
THE WINONA AND ST. PETER RAILROAD COMPANY.

894 *Summons for relief.*

State of Minnesota to the Winona and St. Peter Railroad Company, Defendant:

You are hereby summoned and required to answer the
299 complaint in this action, a copy of which is hereby served on you, and to serve a copy of your answer to the said complaint on the subscriber, at his office at Faribault, Minnesota, within twenty days after the service of this summons upon you, exclusive of the day of such service, and if you fail to answer the
895 said complaint within the time aforesaid the plaintiff in this action will apply to the court for the relief demanded in said complaint.

GORDON E. COLE,
Plaintiff's Attorney, Faribault, Minn.

Dated July 10, A. D. 1878.

[Endorsement on summons.]

STATE OF MINNESOTA,
County of Winona, ss:

896 I hereby certify and return that on the 22d day of July, 1878, at the city and county of Winona, I served the within summons and the complaint hereunto attached upon the defendant within named by delivering to and leaving with S. Sanborn, superintendent of the Winona and St. Peter Railroad Company, true and correct copies thereof.

Fees, $1.50.

WM. H. DILL,
Sheriff of Winona County, Minn.

300 *Amendment to complaint.*

State of Minnesota, county of Blue Earth, district court, sixth judicial district.

898 ASHBEL H. BARNEY ET AL.
vs.
THE WINONA AND ST. PETER RAILROAD Company.

These amendments are copied into the copy of original complaint hereto attached.

W. C. DURKEE,
Clk of Dist. Court.

The complaint heretofore served in this action is hereby amended as follows, to wit: After the word "road" in line twenty-eight in folio thirteenth of said complaint, insert the words, to wit: "All the lands within the six and fifteen limits of the Congressional 899
grant, referred to in said contract, to the center line of sections two, eleven, fourteen, twenty-three, twenty-six, and thirty-five, in township 106, range 14, running north and south through the city of Rochester, in said State."

In line thirty-two, in folio fourteenth, after the word "contract" insert the words, "to wit: all the lands within the six, fifteen, ten, and twenty miles limits of the Congressional grant referred to in said contract, extending west, to the west line of section three, ten, fifteen, twenty-two, and thirty-four, of the tier of townships in 900
range thirty-nine, according to the United States survey."

GORDON E. COLE,
Pl'ffs' Att'y.

(Endorsed:) District court, county of Blue Earth. Ash-
301 bel H. Barney et al. vs. The Winona & St. Peter Railroad Company. Amendments to complaint. Due service of the within amendments admitted and the same accepted, this 6th day of September, 1878. Thomas Wilson, deft's att'y. Filed Nov. 2, 1878. W. C. Durkee, clerk district court. Gordon E. Cole, pl'ffs' att'y. 901

State of Minnesota, Blue Earth County, district court, sixth judicial district.

ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, and Charles T. Barney, Angus Smith, and Benjamin P. Cheney, 902
against
THE WINONA AND ST. PETER RAILROAD COMPANY.

The defendant answers to the complaint herein.

1. That, except as hereinafter expressly admitted, it denies the complaint, and each and every allegation thereof.

2. That it admits that it is a corporation, incorporated and established, and doing business under the laws of the State of Minnesota, 903
as alleged, and that in the year A. D. 1867, for a valuable consideration, it, as party of the second part, entered into the contract, a copy of which is attached to the complaint, with the
302 parties therein named as parties of the first part, to which contract, as evidence of its terms and tenor, this defendant, for greater certainty, refers, and that the length of defendant's line of railroad completed westerly from Winona (the eastern terminus thereof) at the time said contract was entered into was one hundred and two miles. 904

And the defendant further admits that before the commencement of this action, at the request of the plaintiffs, it conveyed and released to the Winona and St. Peter Land Company, a corporation created, organized by and under the laws of the State of Minnesota, two hundred and sixty-seven thousand, seven hundred and fifty-four and 93½ one-hundredths acres of said lands referred to in said contract, Exhibit "A," and that it, at the like instance and request of the plaintiffs, prior to the commencement of this action, conveyed
905 to various parties, by the plaintiffs designated, forty-nine thousand six hundred and six and 75 one-hundredths acres of said lands.

And the defendant further admits that the plaintiffs tendered to it for execution, and demanded that it execute a deed of the following-described lands, viz: All the lands conveyed by the State of Minnesota to the Winona and St. Peter Railroad Company which lie within the six and fifteen mile limits of the Congressional land
906 grant approved March 3d, 1857, and entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of
303 Alabama to aid in the construction of certain railroads in said State," and which lie between the eastern terminus of said road at Winona and a line running through the center of sections two, eleven, fourteen, twenty-three, twenty-six, and thirty-five, in the tier of sections in range fourteen west, and all the lands con-
907 veyed by the State to the defendant which lie within the six, ten, fifteen, and twenty mile limits of said Congressional grant, between the center line of the tier of sections aforesaid in range fourteen and the west line of sections three, ten, fifteen, twenty-two, and thirty-four, in the tier of sections in range thirty-nine west, in the State of Minnesota, according to the United States survey. And that this defendant refused to execute such deed.

And this defendant admits that it has lists of all the lands deeded to it by the State, and it avers that the plaintiffs also have lists of all
908 such lands and well knew the description of all the lands which have been conveyed to this defendant by the State of Minnesota and the description of all the lands conveyed by the defendant, and the price for which and the person to whom the same have been conveyed.

3. That in the month of March, A. D. 1874, the said Danford N. Barney, one of the parties of the first part to the said contract, Exhibit "A," died intestate, leaving surviving him, his sole heirs
909 at law, three children and a widow, which widow deceased before the commencement of this action.

That the said Barney at the time of his death was the owner of one undivided tenth part of all the estate or interest pur-
304 chased or secured by, or contracted, or granted to the said parties of the first part to said contract, Exhibit A, in and by said contract.

And the defendant claims and insists that there is a defect of the parties plaintiff herein in the omission of the heirs, personal repre-

sentatives, and next of kin of the said Danford N. Barney, and of said widow of the said Danford N. Barney. 910

WILSON & GALE,
Attorneys for Defendant.
B. C. COOK,
Of Counsel.

(Endorsed:) District court, Blue Earth County. Ashbel H. Barney et al. vs. The Winona and St. Peter Railroad Company. Answer: I admit due service of the within answer this 8th day of October, 1878. Gordon E. Cole, pl'ffs' att'y. Filed Nov. 19, 1878. W. C. Durkee, clerk district court, Blue Earth Co., Minn.

911

State of Minnesota, Blue Earth County, district court, sixth judicial district.

ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith and Benjamin P. Cheney
against
THE WINONA AND ST. PETER RAILROAD COMPANY.

912

Demurrer.

And now comes the plaintiffs and demurs to the third paragraph or subdivision of defendant's answer herein, and to all the 305 allegations in said answer contained subsequent to the number three occurring in said answer, and assign as ground of demurrer that the same does not state facts sufficient to constitute a defense to said action.

GORDON E. COLE,
Plaintiffs' Attorney.

(Endorsed:) Due service of the within demurrer admitted this 913
12th day of October, 1878. Wilson & Gale, def't's attys.

State of Minnesota, Blue Earth County, district court.

ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith, and Benjamin P. Cheney, pl'ffs, 914
against
THE WINONA AND ST. PETER RAILROAD COMPANY, def't.

SIR: You will please take notice that on the pleadings and on all the records and files in this action, and on the affidavits of Thomas Wilson, and the petition and bond, copies of which are herewith served upon you, the defendant, the Winona and St. Peter Railroad

915 Company, will move the said district court of Blue Earth County, at the chambers of the judge of the said court, in the city of Mankato, in said county, on the 9th day of November, A. D. 1878, at six o'clock in the afternoon of said day, or as soon
306 thereafter as counsel can be heard; that the said district court of Blue Earth County accept the aforesaid petition and bond, and proceed no further in this suit, an' that the record of this suit be duly certified by the clerk of this court to circuit court of the United States for the district of Minnesota, before the
916 first day of the next term thereof, as provided by and in pursuance of the acts of Congress in such case made and provided.

WILSON & GALE,
Att'ys for Petitioners, The W. & St. P. R. R.

WINONA, *Oct. 30, 1878.*

To the Hon. GORDON E. COLE, *Att'y for Pl'ff.*

In the district court of Blue Earth County, State of Minnesota.

917 ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith, and Benjamin P. Cheney, plaintiffs,
against
THE WINONA AND ST. PETER RAILROAD COMPANY, defendant.

Petition for removal to the circuit court of the United States, district of Minnesota.

918 *To the Honorable the District Court for the Sixth Judicial District, State of Minnesota:*

Your petitioner respectfully shows to this honorable court
307 that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioner (defendant herein) was at the time of commencement of this action, and still is, a corporation created
919 and existing by and under the laws of the State of Minnesota, and was at the time of the commencement of this action, and still is, a resident and citizen of the State of Minnesota.

That each and every one of the plaintiffs, Ashbel H. Barney, Jesse Hoyt, Alfred M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, and Charles T. Barney, was at the time of the commencement of this action, and still is, a citizen and resident of the State of New York; that the plaintiff, Angus Smith, was at the time of the commencement of this action, and still is, a resident
920 and citizen of the State of Wisconsin, and the plaintiff, Benjamin P. Cheney, was at the commencement of this action, and still is, a resident and citizen of the State of Massachusetts.

And your petitioner offers herewith a bond, with good and sufficient surety, for its entering in said circuit court of the United States, on the first day of the next session thereof, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court should hold that this suit was wrongfully or improperly removed thereto.

And your petitioner prays this honorable court to proceed no 921
further herein, except to make the order of removal by law and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States
308 in and for the district of Minnesota. And your petitioner will ever pray.

[SEAL.] WINONA AND ST. PETER RAILROAD COMPANY,
By ALBERT KEEP, *President.*

Attest:

J. B. REDFIELD, *Asst. Secretary.* 922

WILSON & GALE, *Attys. for Deft.*

STATE OF ILLINOIS,
County of Cook, ss:

Albert Keep, having been first duly sworn, doth say that he is the president of the defendant, The Winona & St. Peter Railroad Company, the above-named petitioner.

That he has read the foregoing petition and knows the contents thereof, and that the statements and allegations therein contained 923
are true, as he verily believes, and that he is authorized to make such petition, and to take all necessary steps to remove this cause from the said district court of the State of Minnesota into the circuit court of the United States for the district of Minnesota, as prayed for in said petition.

ALBERT KEEP.

Subscribed by the said Albert Keep in my presence, and by him sworn to before me this 19th day of October, A. D. 1878.

[SEAL.] RALPH E. RICHARDS, 924
Notary Public.

(Endorsed:) Filed Nov. 19, 1878. W. C. Durkee, clerk.

309 In the district court of Blue Earth County, State of Minnesota.

ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith, and Benjamin P. Cheney, plaintiffs,
against 925
THE WINONA AND ST. PETER RAILROAD COMPANY, defendant.

Know all men by these presents that the Winona and St. Peter Railroad Company, as principal, and Thomas Wilson and Sherburn

Sanborn, as sureties, are held and firmly bound unto Ashbel H. Barney, Jesse Hoyt, Alfred M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith, and Benjamin P. Cheney in the penal sum of one thousand dollars, the
926 payment whereof well and truly to be made unto the parties last aforesaid, their heirs and assigns, we (said principal and sureties) bind ourselves, our heirs, representatives, successors, and assigns, jointly and severally, firmly by these presents.

Yet, upon these conditions, the said Winona & St. Peter Railroad Company, having petitioned the district court of Blue Earth County, State of Minnesota, for the removal of the above-named action therein pending into the circuit court of the United States to and for the district of Minnesota:

927 Now, if the said Winona & St. Peter Railroad Company, your petitioner, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by
310 said circuit court of the United States if said court shall hold that the said action was wrongfully or improperly removed thereto, then this obligation to be void, otherwise in full force and virtue.

In witness whereof the said Winona & St. Peter Railroad Company has caused this bond to be executed by its said president, and
928 its seal to be hereto attached by its secretary, and the sureties have hereto set their hands and seals this 19th day of October, A. D. 1878.

[SEAL.] WINONA & ST. PETER RAILROAD COMPANY,
By ~~ALBERT~~ KEEP, *President.*
THOMAS WILSON. [SEAL.]
S. SANBORN. [SEAL.]

Attest:
J. B. REDFIELD, *Ass't Sec'y.*

STATE OF MINNESOTA, *Winona County, ss:*

929 We, Thomas Wilson and Sherburn Sanborn, the sureties named in the foregoing bond, being duly sworn, do each for himself depose and say, that he is a resident of the State aforesaid, and property holder therein; that he is worth the sum of one thousand dollars over and above all debts and liabilities and exclusive of property by law exempt from execution; that he has property in the aforesaid State liable to execution of the value of more than five hundred dollars.

THOMAS WILSON.
S. SANBORN.

930 Subscribed to in my presence, and by them sworn to before me this 26th day of October, A. D. 1878.

[SEAL.] WM. GALE, *Notary Public.*

(Endorsed.) Filed Nov. 19, 1878. W. C. Durkee, clerk dist. ct.

311 District court, Blue Earth County, State of Minnesota.

ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith, and Benjamin P. Cheney, plaintiffs,
against
THE WINONA AND ST. PETER RAILROAD COMPANY, defendant. 931

STATE OF MINNESOTA, *County of Winona, ss:*

Thomas Wilson, having been first duly sworn, doth depose and say, that he is one of the attorneys for the defendant (the petitioner herein).

That this action was commenced since the last term of this court, in said county of Blue Earth, and is still pending and untried, and 932 that since the same was commenced there has been no term of said court at which it could have been tried.

THOMAS WILSON.

Sworn and subscribed before me this 30th day of October, 1878.
[SEAL.] WM. A. ALLEN,
Notary Public.

312 District court, Blue Earth County, State of Minnesota.

ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith, and Benjamin P. Cheney, plaintiffs. 934
against
THE WINONA AND ST. PETER RAILROAD COMPANY, def't.

The above-named defendant having filed in this court its petition and bond for the removal of this cause into the United States circuit court, next to be held in the district of Minnesota, in pursuance of the provisions of the acts of Congress providing for the removal of causes from the State court into the said circuit court 935 of the United States, on motion of Wilson & Gale, attorneys for the petitioner, no one appearing to oppose such motion, it is hereby ordered, adjudged, and determined that this court accept said petition and bond and proceed no further in such suit, and that the record in this suit be duly certified by the clerk of this court to the said circuit court of the United States before the first day of the next term thereof, as provided by and in pursuance of said acts of Congress.

Dated this 9th day of November, A. D. 1878.

By the court. D. A. DICKINSON, *Judge*. 936

(Endorsed:) Filed Nov. 19, 1878. W. C. Durkee, clerk district court.

313 STATE OF MINNESOTA, *Blue Earth County, ss:*

I, Wm. C. Durkey, clerk of the district court in and for said county and State, hereby certify that I have carefully com-
937 pared the foregoing copies with the original files in the action therein entitled, and that the same are true and correct transcripts thereof, as appears from said original, which remain on file in my office, and of the whole thereof.

I further certify that said files consist of the complaint, summons, answer, amendments to complaint, demurrer to answer, notice of motion for change of venue, petition, bond, affidavit of Thomas Wilson, and order of court accepting petition, &c.

Witness my hand and seal of office at Mankato, this 26th day of November, A. D. 1878.

938 [SEAL.] WILLIAM C. DURKEE,
Clerk District Court.

United States circuit court for the district of Minnesota. Term minutes, December term, A. D. 1878, January 20, 1879.

ASHBEL H. BARNEY ET AL.
vs.
THE WINONA AND ST. PETER RAIL-
939 road Company.

The demurrer of the plaintiffs to the answer of the defendant coming on to be heard, the plaintiffs appeared by Gordon E. Cole, esq., their attorney and solicitor, and the defendant by
314 Thomas Wilson, esq. During the argument leave was granted the plaintiffs to amend their bill of complaint, and it was suggested that the parties would stipulate in regard to certain matters respecting parties plaintiff which had been discussed in the argument.

940 District of Minnesota, U. S. cir. ct.

ASHBEL H. BARNEY ET AL.
vs.
THE WINONA AND ST. PETER RAIL-
road Company.

It is hereby stipulated that the pleadings may stand as they are
941 until the hearing, and if the court shall decide that heirs of deceased contractors claiming an interest are necessary parties, and so orders, said persons so claiming an interest may be joined without further notice or application, without prejudice from any delay in making said parties at an earlier stage of the suit.

Dated January 21, 1879.

GORDON E. COLE,
Plaintiffs' Attorney.
WILSON & GALE,
THOMAS WILSON,
942 *Defendant's Attorneys.*

(Indorsed:) Filed January 27, 1879. H. E. Mann, clerk.

315 United States circuit court, district of Minnesota.

ASHBEL H. BARNEY ET AL.
against
THE WINONA AND ST. PETER RAILROAD COMPANY.

The plaintiffs, by order of the court, upon the hearing, makes 943
the following new parties plaintiff and amends his bill as follows, to wit: It is further alleged that Lucy L. Barney, N. C. Barney, Sarah B. Sturges, Bell D. Gurnee, H. S. Barney, N. H. Barney, are all the children and heirs-at-law of said Danforth N. Barney, and are all non-residents of this State and reside as follows, to wit: In the State of New York, and in or about the city of New York. That N. H. Barney, last named, is an infant, and hereby appears by H. W. Lamberton, his next friend, a resident of the city of Winona, in the State of Minnesota, whose written authority and consent to act as such next friend is herewith filed. 944

And it is further alleged that William H. Latham and Edward P. Latham, who are hereby made parties pursuant to said order, are brothers and heirs-at-law of said Charles F. Latham, who died—leaving nine brothers and sisters his heirs-at-law—without children or widow or father or mother; that the said parties hereby made plaintiff, to wit, said Edward P. Latham and William H. Latham, claim to be the owner in equity of two-ninths of one thirty-seventh part of all lands or other property which accrued or may accrue to 945
the parties of the first part in said contract, and of two-ninths of the interest of said Charles F. Latham.

That the other plaintiffs herein have acquired the interest
316 of the other heirs of said Latham, and the plaintiffs in the bill, as originally filed, claim that they have acquired the interest of said William H. Latham and Edward P. Latham, and the matter now is in litigation between them in an action now pending in the court, in which said William H. Latham and said Edward P. Latham are plaintiffs, and said Ashbel H. Barney, Jesse Hoyt, 946
Alfred M. Hoyt, Samuel N. Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, N. C. Barney, Charles T. Barney, and the Winona & St. Peter Land Company are defendants. That said action was commenced in the district court of the county of Waseca, in the State of Minnesota, some time in September, 1876, and was removed on petition of the defendants therein, except said land company, to this court, and was by this court, on motion of the plaintiffs therein, remanded to the State court, from which order the said defendants therein have appealed to the Supreme 947
Court of the United States, where the same is now pending.

And plaintiffs pray that while the judgment of this court shall be such as to protect the defendant herein from adverse claims as against any judgment which may be rendered herein, that the rights of these plaintiffs as between themselves, and which are in litigation in said action, be reserved and not passed upon or affected by any order or judgment which this court may make herein.

GORDON E. COLE,
Sol. for Plffs.

(Endorsed:) Filed June 27, 1879. H. E. Mann, clerk. 948

317 State of Minnesota, U. S. circuit court.

ASHBEL H. BARNEY ET AL.
vs.
THE WINONA & ST. PETER RAILROAD COMPANY.

949 I hereby consent to act as the next friend of N. H. Barney, an infant plaintiff in the above-entitled action, and authorize Gordon E. Cole, pl'ffs' atty. in said action, to appear for me as such next friend and make me as such a party to said action.

H. W. LAMBERTON.

Dated June 16, 1879.

District of Minnesota, United States circuit court.

950 ASHBEL H. BARNEY ET AL.
vs.
THE WINONA & ST. PETER RAILROAD COMPANY.

In further pursuance of the oral order of the court on the hearing that the heirs of Mrs. D. N. Barney, who survived her husband and died before the commencement of this action, be made parties, plaintiff avers that all the heirs of Mrs. D. N. Barney are A. L. Barney, Belle B. Gurnee, and Lucy L. Barney, who have already been made parties as the heirs of D. N. Barney, and are hereby
951 made and joined as parties plaintiff to this action as the heirs of the said Mrs. D. N. Barney.

GORDON E. COLE,
Sol'r and Counsel for Compl's.

(Endorsed:) Filed July 24, 1879. H. E. Mann, clerk.

318 United States circuit court for the district of Minnesota. Term minutes, June term, A. D. 1879. June 26, 1879.

A. H. BARNEY ET AL.
952 *vs.*
THE WINONA & ST. PETER RAILROAD COMPANY.

This cause, coming on to be heard upon the pleadings and proofs, was argued on the part of the plaintiffs by Gordon E. Cole, esq., and on the part of the defendant by Thomas Wilson, esq.

953 United States circuit court for the district of Minnesota. Term minutes, June term, A. D. 1879. June 27, 1879.

ASHBEL H. BARNEY ET AL.
vs.
THE WINONA & ST. PETER RAILROAD COMPANY.

This cause came on to be heard before the court, Hon. J. F. Dillon, circuit judge, sitting alone, and was argued on behalf of
954 the plaintiffs by Gordon E. Cole, esq., and on behalf of the defendant by Thomas Wilson, esq., and submitted, and by the court taken under advisement.

319 United States circuit court for the district of Minnesota.
Term minutes, June term, A. D. 1879. August 29, 1879.

ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, William G. Fargo, M. Barney, Charles T. Barney, Angus Smith, Benjamin P. Cheney, Lucy L. Barney, N. C. Barney, Sarah B. Sturgiss, Bell D. Gurnee, H. L. Barney, N. H. Barney, who sues by H. W. Lamberton, his next friend; William H. Latham, and Edward P. Latham 955

vs.

THE WINONA & ST. PETER RAILROAD COMPANY.

Interlocutory decree. 956

This cause came on for hearing at the June term, 1879, upon the pleadings, proofs, exhibits, and stipulations of the parties, and was signed by Mr. Gordon E. Cole, of counsel for the plaintiffs, and by Mr. Thomas Wilson, of counsel for the defendant; and, upon consideration thereof, the court doth find that the plaintiffs are entitled to a specific execution of the agreement of October 31st, 1867, mentioned in the pleadings, and to an account in respect to lands sold; and, to enable the court hereafter to make a final decree, it is now, at the term aforesaid, hereby ordered that the cause be, 957 and the same is hereby, referred to H. W. Lamberton and Charles E. Simmons, as special masters, to inquire and state to the
320 court all the data necessary for a final decree in accordance with the directions contained in the memorandum hereto annexed and made part hereof.

In making such inquiry and statement the said special masters shall use the proofs taken in the cause, and the parties shall also 958 produce to the masters upon oath all books, deeds, and writings in their custody or power relating thereto.

The said masters shall make their report touching the matters hereby referred to them with all convenient speed; and if any special matter shall arise, the said masters are at liberty to state the same to the court with any special circumstances pertaining thereto. And the said masters shall be at liberty to embrace in their report any other facts necessary to a full and final decree in respect of all the matters set forth in the bill of complaint.

JOHN F. DILLON, *Judge.* 959

Memorandum of directions to the special masters referred to in the foregoing interlocutory decree and made part thereof.

I.

I am of opinion that the amount of lands to which the plaintiffs are entitled must be estimated upon the basis of the actual length of road to Waseca—102 79-100—instead of the supposed length at 960 the date of the contract of 105 miles.

The contract is express that plaintiffs are to receive lands "for the 105 miles, or so much thereof as is now constructed."

321 II.

There is to be deducted from the amount of lands in which the plaintiffs are entitled all lands used for the track of the road, depot grounds, and other purposes necessary or incidental to the operation of the road.

961 III.

I am of opinion that the acts of Congress granting land to the defendant company do not make a grant of any lands lying in the State of Wisconsin. Under the act of March 3, 1857, which grants by description and not by quantity, the grant would not attach to lands within the six-mile limit on the Wisconsin side of the river, and there could be no indemnity 'ands taken therefor.

IV.

Where the defendant's road crosses the Minneapolis & Cedar
962 Valley R. R. Co. (now Milwaukee & St. Paul), the grants to these two companies conflict or overlap. The effect of this is that where the grants conflict these two roads take as tenants in common, each an undivided half. Under the act of 1865 this makes a deficiency to the extent of the loss occasioned by the conflict, which may be supplied as in the case of other deficiencies. There is nothing inconsistent with this view in the proviso to section three (3) of the act of March 3, 1865, which only contemplates a deduction in any event after full completion "from the full quantity of lands granted,"
963 so that the company shall in no event receive more than ten sections per mile.

V.

As to the road constructed after the act of March 3, 1865,
322 as modified by the act of July 13, 1866, when these two acts are read in connection with the original act of March 3, 1857, I am of opinion that the "continuous principle," as Congress styled it in another act, was established by section six (6) of the act of March 3, 1865. No such principle existed under the act of
964 1857. (R. R. Co. vs. Courtright, 21 Wallace, 310.) The object of the coterminous principle was to insure the completion of the whole line of road by preventing the taking of deficiency lands in anticipation of construction. Under the act of 1865 no lands could be taken outside of the 20-mile limit, or in advance of the constructed line. Along the constructed line not exceeding ten sections per mile lands could be taken; if there were that many sections, well; if not, the deficiency must remain, and could not be made good in advance of actual construction of the whole line of the road. This
965 was an important change from the original act of 1857 in this respect. The act of July 13, 1866, in sections 3 and 4, and particularly by section 4, made a compromise provision between the policies of the acts of 1857 and 1865. The act of 1866 (sec. 4) retained the

coterminous principle as to lands granted by any act of Congress to Minnesota "specifically lying in place," and prohibited the State from disposing of such lands, i. e., the lands lying in place within the 10-mile limits, in advance of actual construction; but it abandoned the coterminous principle as respects lands not in place so far as to authorize these to be taken to make up deficiencies in the construction of any division or unit of ten miles of road. 966

Out of such lands deficiencies could be made up in advance of construction opposite thereto, but such deficiencies could
323 not be supplied out of the lands in place. The repeal by implication in the proviso to section 4 of the act of 1865 is not to extend beyond the scope of the repugnancy to section six (6) of the act of 1865, and does not have the effect to restore the provisions of the act of 1857 as to the selection of deficiency lands. Under the act of 1866 indemnity lands for deficiencies in the construction "of any division of ten miles of road" may be selected 967 without reference to the coterminous principle, but the selection can not be made at the expense of diminishing the grant of lands in place.

VI.

I am of opinion that under the act of March 3, 1857, Congress did not intend to grant lands which before the date of the act it had sold, and that indemnity is confined to lands within the grant sold or disposed of by the United States after the date of the 968 grant and before the definite location of the road.

The right is reserved to reargue this point on the coming in of the report, and the masters will make an alternate report on the basis that Congress did intend to grant lands which before the date of the act it had sold, and that the company is entitled to indemnity therefor.

JOHN F. DILLON, *Judge*.

United States circuit court, district of Minnesota.

ASHBEL H. BARNEY ET AL. } 969
vs.
THE WINONA AND ST. PETER RAILROAD COMPANY. }

The undersigned special masters appointed by the court
324 at the June term, 1879, and to whom this cause was referred to inquire and state to the court all the data necessary to a final decree, in accordance with the instructions contained in the memorandum contained in and annexed to the interlocutory decree made by said court at said time, respectfully report that they have 970 made the inquiry by said court in said decree directed, and find the following facts and data:

First. That the map hereto attached and marked Exhibit A correctly shows:

1. The line of the defendant's road throughout its entire length, as the same was definitely fixed and located, and the subdivisions, sections, township, and ranges over and through which it is located.

2. The land limits of the land grants by the United States to the Territory and State of Minnesota to aid the defendant's line of
971 road, as said land limits were fixed and adjusted by the Secretary of the Interior, and in accordance with which the lands were certified to the State by the Secretary of the Interior and conveyed by the State to the defendants. Said map also shows the tracts, subdivisions, and sections falling within said limits.

3. The lands certified by the United States to the State under the grants in aid of the defendant's line of road, and deeded by the State to the defendant, and the exact description and location of said lands.

Those colored blue having been so deeded jointly to the South-
972 ern Minnesota Railroad Company and the defendant, an undivided half to each. Those colored yellow having been so deeded to the Minnesota Central Railway Company and this defendant, an undivided moiety to each. Those colored green having been so
325 deeded to the St. Paul and Sioux City Railroad Company and this defendant, jointly, an undivided moiety to each. And those colored red having been so deeded to this defendant in severalty.

4. The intersections or crossings of the defendant's line of road and other land-grant railroads, and the limits of each road at such crossings.

973 5. The Indian and other reservations along and bordering on the defendant's line of road, which reservations remained and were in force at the date of each of the land grants to aid the building of the defendant's line of road.

Secondly. That the Minnesota Central Railway (or the Cedar Valley Railroad, as it was first called), which is crossed by the defendant's line of road in town. 107, range 20, is one of the land-grant railroads of the State of Minnesota, and a beneficiary of the
974 land-grant acts of Congress of March 3, 1857, and March 3, 1865, aforesaid, and neither the line of the last-mentioned road nor of defendant was built to or past said crossing until after March 3, 1865.

Thirdly. That the St. Paul and Sioux City Railroad, which is crossed by defendant's line of road in town. 109, range 26, is also one of the land-grant roads of this State, and the beneficiary of the act of Congress of March 3, 1857, aforesaid, and of an act of Congress entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said
975 State," approved May 12, 1864, to which reference is hereby made, and of the act of Congress of March 3, 1865, aforesaid, and the last-named line of road and the defendant's line of road were each and both built past the point of their intersection after March 3, 1865.

326 Fourthly. That the length of defendant's line of road from Winona, the eastern terminus of said line, to Rochester, is forty-nine and one-half miles (49½), and from Rochester to Waseca, the farthest point westwardly to which said line was built in the

year 1867, is fifty-three and 29-100 miles, and the whole length of the said line from Winona to the Big Sioux River, the western ter- 976
minus, is three hundred and miles.

Fifthly. That defendant's line of road was constructed and completed from Winona to Rochester prior to the month of March, 1865.

Sixthly. That the whole number of acres of land included in every alternate section, designated by odd numbers, for six sections in width on each side of defendant's line of road from Winona to Rochester is one hundred and seventy-three thousand two hundred and ten and 71-100 (173,210.71) acres, of which, prior to the 3rd 977
day of March, 1857, one hundred and thirty-four thousand and thirty-one and 16-100 (134,031.16) acres had been sold by the United States, and of which, in addition to those sold, as last aforesaid, prior to the 3rd day of March, 1857, the right of preemption had attached to twenty-seven thousand six hundred and eight and 63-100 (27,608.63) acres of the number of acres lying within the alternate odd-numbered sections for six sections in width on each side of said road from Winona to Rochester, and to which the right of preemption had attached prior to March 3rd, 1857, as last afore- 978
said; that right of preemption which had previously attached was, subsequent to said date, perfected, and the lands thereby obtained by the preemptors to the amount and number of twenty-five thousand nine hundred and ten (25,910) acres, and that the right
327 of preemption which had thus attached previous to said date, March 3rd, 1857, was, subsequent to said date, forfeited to one thousand six hundred and ninety-eight and 63-100 (1,698.63) acres, which were not acquired by the claimants under the preemption law, but were, after the 3rd day of March, 1857, forfeited.

That for some time after the making of the land grants aforesaid 979
lands falling within the limits of the grant to which the right of preemption had attached prior to the grant, but which right was forfeited subsequent to the grant, were certified to the State and conveyed to the railroad company as lands falling within such grant, and the lands between Winona and Rochester aforesaid, falling within the limits of the grant and to which the right of preemption had attached prior thereto, and which were forfeited subsequent thereto as aforesaid, were so certified and deeded. But, 980
later, the ruling has been otherwise, and the Secretary of the Interior has held that the grant to aid defendant's line of road is more than full, and, therefore, that he will not for any part or section of the line of road certify other lands to it within its indemnity limits.

And the whole number of acres included in every alternate odd-numbered section for six sections in width on each side of the defendant's line of road from Winona to Rochester which the United States had not sold, or to which the right of preemption had not attached prior to the third day of March, 1857, was, and 981
is, eleven thousand five hundred and seventy and $\frac{92}{100}$ (11,570.92) acres.

Seventhly. That from Rochester to Waseca, a distance of
328 fifty-three and $\frac{29}{100}$ miles, the number of acres of land within every alternate section, designated by odd numbers, for ten sections in width on each side of said road is three hundred and forty thousand and eighty and $\frac{55}{100}$ (340,280.55) acres, of which prior to the third day of March, 1865, the United States had sold,
982 or the right of preemption had attached, and said right of preemption had been perfected to 252,898.68 acres, and that the whole number of acres included in every alternate odd-numbered section for ten sections in width on each side of said road from Rochester to Waseca which the United States had not sold, or to which the right of preemption had not attached, as aforesaid, prior to the 3d day of March, 1865, was, and is, 87,381.87.

Eighthly. That the area of land in odd-numbered sections within the common or overlapping limits of the Minnesota Central (or
983 Cedar Valley) Railroad Company and the Winona and St. Peter Railroad Company are as follows, viz: 59,239.85 acres.

Within the six-mile limits of the former and the ten-mile limits of the latter, 36,255.65 acres.

Within the six-mile limits of the former and the twenty-mile limits of the latter, 82,699.01 acres.

Within the common ten-mile limits of both roads, 64,176.76 acres.

Ninthly. That on the third day of March, 1857, there were in the alternate odd-numbered sections within the common or over-
984 lapping six-mile limits of the last-named roads, at the point of crossing aforesaid, 21,030.47 acres of land, and no more, which the United States had not then sold, or to which the right of preemption had not then attached, and which lands were by
329 the State deeded to both roads, a moiety to each. And at the date last aforesaid there were in the alternate odd-numbered sections of said last-named two roads, at the crossing aforesaid, within the six-mile limits of the Minnesota Central Railway, and which on the passage of the act of 1865 fell between the six
985 and the ten mile limits of the Winona and St. Peter Railroad Company, 15,121.29 acres of land, and no more, which the United States had not then sold, or to which the right of preemption had not then attached, all of which were deeded by the State to the former company.

And at the date last aforesaid there were in the alternate odd-numbered sections, at the crossing of the last-named two roads within the six-mile limits of the former, and which were, on the passage of the act of 1865 and the fixing of the limits under said
986 act, between the ten and twenty mile limits of the latter road, 17,329.98 acres, and no more, which the United States had not then sold, and to which the right of preemption had not attached, on the 3d day of March, 1857, all of which were deeded by the State to the former company.

And on the 3d day of March, 1865, there were, within the common overlapping limits of said railroad companies, at the said crossing, between the six-mile and the ten-mile limits of each and

both of said companies, 6,569.70 acres, and no more, which the United States had not then sold, and to which the right of pre-emption had not attached, at said last date, which lands were con- 987
veyed by the State to both of said companies, a moiety to each.

Tenthly. That the number of acres certified to the State
330 and deeded by the State to the defendant company for the purpose of aiding in the building of the defendant's line of road, and which lie opposite that portion of said line between Winona and Rochester, is, in the aggregate, twenty-four thousand nine hundred and sixty-nine and 77-100 (24,969.77) acres, of which nine thousand five hundred and seventy-two and 32-100 (9,572.32) 988
acres are in the six, and fifteen thousand three hundred and ninety-seven and 45-100 (15,397.45) acres are in the fifteen mile limits.

And the number of acres certified to the State and deeded by the State to the defendant company for the purpose of aiding in the building of the defendant's line of road, and which lie opposite that part of the line between Rochester and Waseca, is, in the aggregate, 85,111.87½ acres; and the number of acres certified to the State and deeded by the State to the defendant's company for the purpose of aiding in the building of the defendant's line of road, 989
which lie opposite each consecutive section of ten consecutive miles, commencing at Rochester and running westwardly to the western terminus of said road, is as follows, viz: Opposite the first section of ten consecutive miles, commencing at Rochester and running westwardly, as per the following schedule:

331	Total No. of acres.	6 mile limits (acres).	Between 6 & 10 mile limits.	Between 10 & 15 mile limits.	Between 15 & 20 mile limits.
					991
First ....ten mile..	9, 160. 13	2, 115. 57	3, 357. 23	3, 527. 20	160. 13
Second..... " " ..	10, 960. 98	3, 078. 71	5, 762. 92½	2, 119. 34½	.....
Third..... " " ..	12, 126. 85½	9, 325. 81½	826. 29	1, 974. 75	.....
Fourth ..... " " ..	15, 049. 65½	7, 254. 43½	2, 625. 75	5, 169. 47	.....
Fifth ..... " " ..	25, 576. 04½	9, 255. 86½	4, 320. 37½	11, 045. 84½	953. 96
Sixth ..... " " ..	23, 236. 96½	9, 473. 31	1, 373. 12	11, 392. 32½	998. 21
Seventh ..... " " ..	6, 290. 36½	2, 020. 87	1, 162. 33½	2, 907. 16	200. 00
Eighth ..... " " ..	1, 725. 59½	1, 534. 72	74. 51	116. 36½	.....
Ninth..... " " ..	5, 090. 96½	818. 30½	1, 267. 24	2, 245. 42	760. 00
Tenth ..... " " ..	6, 876. 86½	5, 236. 92	1, 159. 94½	480. 00	.....
Eleventh ..... " " ..	17, 909. 65½	7, 479. 22½	5, 239. 27½	5, 031. 15½	160. 00
Twelfth ..... " " ..	59, 816. 06½	16, 607. 25	16, 962. 12	17, 527. 27½	879. 42
Thirteenth..... " " ..	74, 503. 68	8, 272. 64	10, 091. 88	22, 113. 82	34, 025. 34
Fourteenth.. " " ..	13, 471. 62½	5, 472. 11½	7, 999. 51	.....	.....
332 Fifteenth.... " " ..	50, 382. 84½	19, 070. 12	18, 424. 96½	11, 033. 73	1, 854. 03
Sixteenth.... " " ..	72, 387. 33	21, 711. 99	18, 239. 79	17, 436. 39	14, 999. 16
Seventeenth ..... " " ..	44, 856. 40½	15, 075. 35	16, 137. 62½	12, 803. 43	840. 00
Eighteenth ..... " " ..	87, 959. 43	35, 730. 91	16, 200. 92	25, 831. 45	10, 196. 15
Nineteenth ..... " " ..	119. 129. 08	38, 024. 97	25, 885. 34	27, 722. 21	27, 496. 56
Twentieth..... " " ..	117, 901. 58	36, 850. 49	24, 119, 52	28, 706. 39	28, 225. 18
Twenty-first..... " " ..	120, 978. 59	36, 884. 69	25, 874. 71	29. 426. 77	28, 702. 42
Twenty-second .... " " ..	124, 362. 01	39. 570. 63	23, 224. 22	32, 115. 57	29, 451. 59
Twenty-third..... " " ..	125, 294. 13	37, 557. 39	24, 491. 87	31, 220. 49	32, 024. 38
Twenty-fourth .... " " ..	131, 633. 23	41, 029. 66	26, 448. 52	34, 342. 19	29, 812. 86
Twenty-fifth..... " " ..	127, 961. 79	37, 248. 43	26, 188. 63	33, 390. 65	31, 134. 08
Twenty-sixth..... " " ..	122, 756. 93	36, 637. 33	24, 412. 62	30, 157. 36	31, 549. 62
Twenty-seventh... " " ..	126, 546. 59	38, 725. 64	25, 373. 53	31, 619. 10	30, 828. 32
Totals.....	1, 653, 945. 38	522, 063. 35	357, 244. 76½	431, 455. 86	343, 181. 41

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996

333 Eleventh. That prior to the date of the said act of Congress of March 3, 1857, the United States had sold or otherwise appropriated, and preemption rights had attached to, 420,660.37 acres of land of the alternate odd-numbered sections

997 within six miles of said road, and, after the date of said grant and prior to the final and definite location of said road, the United States did sell or otherwise appropriate land in the alternate odd-numbered sections within six miles of said road, and preemption rights had attached and did attach 80,055.11 acres thereof, which lands are indicated by the uncolored sections.

Twelfth. Prior to the commencement of this action the defendant, at the request of a majority of the plaintiffs and in part fulfillment of its contract in suit, conveyed 317,094.78 acres of said lands. A correct description of said lands so conveyed is contained
998 in a list thereof, hereto attached and marked Exhibit "B."

Thirteenth. That the lands colored brown on said map, aggregating 72,157.31 acres, are lands certified to the State by the United States, under the land grant acts of Congress aforesaid, and claimed by the St. Paul & Sioux City Railroad Company, and also by the Winona & St. Peter Railroad Company. That a suit was commenced by the latter company against the former to establish its rights and title to said lands, and to have them adjudged to belong to it and not to the St. Paul & Sioux City Company. That
999 in said action a judgment was rendered in favor of the plaintiff, the Winona & St. Peter Railroad Co., which was removed on appeal to the supreme court of the State of Minnesota, in which court it has been argued and submitted, but is yet undecided.

334 Fourteenth. If the question of deficiency in the grant is immaterial in this case, and the plaintiffs are entitled under their contract to six full sections per mile for every mile of road built by defendant prior to the act of March 3, 1865, then the
1000 number of acres to which plaintiffs would be entitled, for and on account of building the road from Winona to Rochester, would be one hundred and ninety thousand and eighty (190,080) acres.

Fifteenth. If the question of the number of acres which the United States have sold or disposed of, or to which preemption rights had attached, or any deficiency in the grant coterminous with the first forty-nine and one-half (49½) miles, is a material and relevant one in the controversy, and the defendant, under the act of March 3, 1857, was entitled to select indemnity lands for and
1001 in lieu of lands so disposed of, or to which preemption rights had attached prior to the date of that act and up to the definite and final location of its line of road, the plaintiffs are entitled to a conveyance for that part of said road constructed, under said act of March 3, 1857, of 173,210.71 acres.

Sixteenth. If such question is material and the defendant was not entitled to select, under the act of March 3, 1857, indemnity lands for and in lieu of those so disposed of as aforesaid, or to which preemption rights had attached prior to the date of the grant, but only
1002 for those so disposed of, or to which preemption rights had attached intermediate the date of the act of March 3, 1857, and the definite and final location of its road, then the plaintiffs are entitled to a conveyance for that part of said road so constructed, under
335 the act of March 3, 1857, of 11,570.93 acres, to be selected as hereinafter stated.

Seventeenth. The entire number of acres within six miles of defendant's railroad, excluding Indian reservation, is 1,121,286.36 acres, and the number of acres actually acquired by said company within said limits is 531,635.67 acres. 1003

Eighteenth. As to that part of defendant's road constructed, under the act of March 3, 1865, between Rochester and Waseca, there is, and has always been, land enough in alternate odd sections within ten miles of said road, cotermin'us with said line between Rochester and Waseca, and outside of ten and within twenty miles cotermin'us therewith or lying westerly of Waseca, to supply for building that portion of said road from Rochester to Waseca, a full grant of ten sections per mile, if such lands are applicable thereto.

Nineteenth. The specific lands to which plaintiffs are entitled to 1004 a conveyance are to be designated, beginning at Winona, and from thence selecting from the lands shown on the map and falling to said company under the said grants, or either of them, excepting therefrom the lands embraced in and shown on Exhibit "B" and proceeding on each side of said railroad in a course running parallel therewith and embracing each of the six and fifteen, ten and twenty mile limits of said land grants, and proceeding incorporating all the lands in the conveyance within each and all of said limits, as shown on said map, and falling to the defendants under 1005 said grants, preserving a uniform line of advance westerly until the number of acres which the court shall determine the plaintiffs are entitled to have conveyed to them are incorporated in
336 said conveyance, excepting from said conveyance all lands used for the track of said railway, to wit, a strip of land across such of said section as it crosses fifty feet in width on each side of the centre line of the main track of the Winona & St. Peter Railroad Company as said railroad is now located and constructed, and any greater width not exceeding one hundred feet in width on 1006 each side of said centre line when necessary permanently to include all cuts, embankments, and ditches and other works of said company when necessary to secure and protect its main lines of railroad, and all the depot grounds at the several stations and lands used for other purposes necessary and incidental to the operation of said railroad, the same to be described by metes and bounds or other suitable description and inserted in the exception to the grant of any section upon which any of such lands are situated.

H. W. LAMBERTON. 1007
CHAS. E. SIMMONS.

United States circuit court for the district of Minnesota. Term minutes, June term, A. D. 1880., June 30, 1880.

Present, Hon. Samuel F. Miller, Hon. Rensselaer R. Nelson, judges.

ASHBEL H. BARNEY ET AL. } 1008
vs.
THE WINONA & ST. PETER RAILROAD COMPANY. }

This cause came on for re-argument, and was argued on behalf of the plaintiffs by Gordon E. Cole, esq.

337 United States circuit court for the district of Minnesota. Term minutes, June term, A. D. 1880. July 1, 1880.

Present: Hon. Samuel F. Miller, Hon. Rensselaer R. Nelson, judges.

1009 ASHBEL H. BARNEY ET AL.
vs.
THE WINONA & ST. PETER RAILROAD Company.

This cause coming on for further hearing on the reargument, was argued on behalf of the defendant by Thomas Wilson, esq.

United States circuit court for the district of Minnesota. Term minutes, June term, A. D. 1880. July 2, 1880.

1010 Present: Hon. Samuel F. Miller, Hon. Rensselaer R. Nelson, judges.

ASHBEL H. BARNEY ET AL.
vs.
THE WINONA AND ST. PETER RAILROAD Company.

This cause coming on for further hearing upon the reargument, was further argued by the counsel for the respective parties and submitted, and by the court taken under advisement.

Messrs. Sanborn & Clough, attorneys for the Western Railroad
1011 Company, are to have the privilege of filing printed briefs in the case at any time previous to Oct. 1, 1880, first serving the same upon Messrs. Wilson and Cole, the attorneys of record in this case, thirty days previously, and each of said attorneys may have until Nov. 1, 1880, to reply to same.

338 In equity in circuit court for the district of Minnesota.

ASHBEL H. BARNEY ET AL.
vs.
THE WINONA AND ST. PETER RAILROAD Company.

1012 I am of opinion that by the true construction of the act of Congress of March 3, 1857, granting lands to the Territory of Minnesota the indemnity clause was intended to include alternate sections within the prescribed limit which had been sold by the United States, or lost by preemption prior to the date of the grant, as well as such as might be sold between that time and the location of the road.

And without further comment on the case of the Leavenworth, Lawrence & Galveston R. R. Co. vs. The United States, 92 U. S. R.,
1013 733, and the Burlington and Missouri River Railroad Co. vs. the same, 98 U. S. R., 339, I do not believe the court, in these cases, intended to establish a different doctrine.

I am of opinion that in the selection of these indemnity lands there is no restriction to coterminous sections of twenty miles in length of the road, except as that may have been affected by the short period between the passage of the act of March 3d, 1865, which did appropriate the lands in place to the construction of coterminous road, and the passage of the act of July 13, 1866, which exempted from that rule lands selected in lieu of those deficient anywhere. 1014

If any of the lands now claimed were certified or patented to the company for work done during that period, they can not be treated as patented in lieu of lands deficient in other sections of ten or twenty miles.

339 I think other questions were settled by Judge Dillon, and Judge Nelson can settle a decree accordingly.

SAM. F. MILLER.

I concur.

R. R. NELSON.

(Indorsed:) Filed Jan. 3, 1881. H. E. Mann, clerk.

1015

United States circuit court, district of Minnesota.

A. H. BARNEY ET AL.
vs.
WINONA AND ST. PETER R. R. CO.

The undersigned special masters, appointed by the court at its June term, 1879, and to whom this cause was again at this term of court referred, to inquire and state certain facts supplemental to 1016 the findings of fact reported to the court by said special masters at the June term thereof, 1880, respectfully report that they have made the inquiry and find:

First. That since the filing of said report the defendant, at the request of the majority of the plaintiffs and in part fulfillment of its contract in suit, have conveyed sixty (60) acres of said land, to wit: Undivided one-half of the following: The SE. ¼ of NE. ¼ of sec. 19, T. 105, R. 10; SW. ¼ of NW. ¼ and NW. ¼ of SW. ¼ of sec. 11, T. 105, R. 11.

Second. That since the coming in of said report the State of 1017 Minnesota has conveyed to the defendant all of the lands reported in said former report as being in controversy with the St. Paul and Sioux City Railroad Co., except the northeast quarter of

340 section 17, in township 107, north of range 40, to which former report reference is made for a description of said land.

Third. That if the defendant company was entitled to receive a full grant of ten sections per mile for that part of its road constructed after the passage of the act of Congress approved March 1018 3d, 1865, and prior to the date of contract in suit, to wit: The road from Rochester to Waseca, a distance of 53 29-100 miles, then the plaintiffs are entitled to a conveyance of one hundred and ninety-seven thousand, one hundred and eleven and 93-100 (197,111.93)

acres, a correct description of which is hereby attached, marked Exhibit A, excepting from said conveyance all lands used for the track of said railway, to wit: A strip of land across such of said sections as it crosses fifty feet in width on each side of the center
1019 line of the main track of the Winona and St. Peter Railroad Company, as said railroad is now located and constructed, and any greater width, not exceeding one hundred feet in width on each side of said center line, when necessary, permanently to include all cuts, embankments and ditches, and other works of said company when necessary to secure and protect its main lines of railroad, and all the depot grounds at the several stations and lands used for other purposes necessary and incidental to the operation of said railroad, same to be described by metes and bounds, or other suita-
1020 ble description, and inserted in the exception to the grant of any section upon which any of such lands are situated.

Fourth. That on the 3d day of March, 1857, there were at the point of crossing of the Minnesota Central Railroad and the
341 Winona & St. Peter Railroad within the six-mile limits and between the six and fifteen-mile limits of the former road, and which, on the passage of the act of March 3d, 1865, fell between the fifteen and twenty-mile limits of the latter road, twenty-three thousand three hundred and ninety-eight and 50-100 (23,393.50)
1021 acres of land, and no more, that the United States had not sold, or to which the right of preemption had not then attached, all of which were deeded by the State to the former company.

Fifth. That between March 3d, 1865, and July 13, 1866, there was constructed that portion of the Winona and St. Peter Railroad extending from Rochester to Kasson, a distance of fourteen and 27-100 miles; that the lands opposite that portion of said road were conveyed to said company under the act of 1857, and prior to the
1022 passage of the act of March 3rd, 1865, with the exception of two hundred and forty and 13-100 (240.13) acres, and that no lands lying opposite the said portion of said line of road were taken to make up the deficiencies occurring in other sections of ten miles of said road, or in any other sections of ten miles than those within the coterminous limits of which they lie, under the acts of 1865 and 1866.

H. W. LAMBERTON,
CHAS. E. SIMMONS,
Special Masters.

342 United States circuit court for the district of Minnesota. Term minutes, December term, A. D. 1880, April 13, 1881.

ASHBEL H. BARNEY ET AL.
vs.
1024 THE WINONA AND ST. PETER RAILROAD Company.

This action coming on to be heard before Judges Dillon and Nelson at the June term, 1879, and a decision having been made and filed, in and by which the case was referred to masters to report

the facts in accordance with said opinion, and the right having been reserved in and by said opinion to reargue the question as to whether, under the act of Congress approved March 3d, 1857, entitled "An act making a grant of lands in alternate sections in the Territory of Minnesota to aid in the construction of certain railroads in said Territory, and granting public lands in alternate 1025
sections to the State of Alabama to aid in the construction of a certain railroad in said State," the right existed in defendant company to select or have selected for its use indemnity lands for deficiencies caused by sales of preemptions prior to the date of the grant; that the report of the masters, to whom the case was referred under said decision, having been filed in the office of the clerk of this court, whereby it appears that the length of the road in controvesy is as follows, to wit: That portion of the road between Winona and 1026
Rochester which was constructed under said act of March 3d, 1857, is forty-nine and one-half miles in length; that portion of the line of road in controversy which was constructed under the act of the
Congress of the United States, approved March 3d, 1865,
343 entitled "An act extending the time for the completion of
certain railroads in Minnesota, and for other purposes," as amended by an act entitled "An act relating to lands granted to the State of Minnesota to aid in constructing railroads," approved July 13th, 1866, being from Rochester to Waseca, is fifty-three and twenty-nine one-hundredths miles in length. 1027

And it further appearing by the report of said masters that if the defendant was, under the said act of March 3d, 1857, entitled (an act) to select indemnity lands for and in lieu of lands disposed of or to which preemption rights had attached prior to the date of the grant, to wit, of said act of March 3d, 1857, and up to the definite and final location of its line of road, the plaintiffs are entitled to a conveyance for that part of said road constructed under the said act of March 3d, 1857, of one hundred and seventy-three thousand two hundred and ten and thirty one-hundredths acres of land to 1028
be selected as hereinafter provided; and it further appearing from the report of the masters that there is, and always has been, land enough in alternate odd-numbered sections within ten miles of the line of road between Rochester and Waseca and coterminous therewith, and outside of ten and within twenty miles coterminous therewith, or lying westerly of Waseca, to supply for building that portion of said road between Rochester and Waseca a full grant of ten sections to the mile, if such lands are applicable thereto; and it further appearing by the report of said masters that prior to the 1029
commencement of this action the defendant, at the request of a majority of the plaintiffs, and in part fulfillment of the contract in
suit, conveyed three hundred and seventeen thousand and
344 ninety-four and seventy-eight hundredths acres of said land;
and it further appearing by a supplemental report of said masters that since the commencement of this action the defendant, at the request of a majority of the plaintiffs, and in part fulfillment of said contract, has conveyed the further quantity of sixty acres of 1030
said land; and it further appearing that by the terms of the con-

tract in suit the specific lands to which plaintiffs are entitled to a conveyance are to be selected as follows, to wit: Beginning at Winona, and from thence selecting from the lands falling to the defendant under either of said grants, excepting therefrom those already conveyed as aforesaid, proceeding on each side of said road in a course parallel therewith and embracing each of the six, ten, fifteen, and
1031 twenty mile limits of said land grants, and, in proceeding, incorporating all the lands in the conveyance within each and all of said limits and falling to the defendant under said grants, preserving a uniform line of advance westerly until the number of acres hereinafter decreed to be conveyed are incorporated in the conveyance, excepting from said conveyance all lands used for the track of said railroad, to wit: A strip of land across each of said lands crossed by said railroad fifty feet in width on each side of the center line of the main track of The Winona & St. Peter Railroad, as said railroad is
1032 now located and constructed, and any greater width, not exceeding one hundred feet in width on each side of said center line, where necessary, permanently to include all cuts, embankments, and ditches, and other works of said company, when necessary, to secure and protect its main line of railroad, and all depot grounds at the several stations, and land used for other purposes, necessary and
345 incident to the operation of said railroad, the same to be described by metes and bounds, or other suitable description, and included in the exceptions to the grant, of any sections in which any of said lands are situated.

And the said masters having made a supplemental report whereby
1033 they report (if the plaintiffs are entitled to the number of acres hereinafter adjudged and decreed to be conveyed) a list of the lands, describing the same by section, town, and range, which should be incorporated in the conveyance, according to the mode of selection hereinbefore specified, which list is made a part of this decree and ordered to be entered as a part thereof; and the case having been reheard before Judges Miller and Nelson upon the masters' report, at the June term of said court, 1880, and the court having held and decided that by the true construction of the act of March third,
1034 1857, granting lands to the Territory of Minnesota, the indemnity clause was intended to include alternate sections within the prescribed limits which had been sold by the United States or lost by preemption prior to the date of the grant, as well as those which might be sold between that time and the location of the road; and the court having further held that under the act of March third, 1865, as amended by that of July thirteenth, 1866, there is no restriction of indemnity lands to coterminous limits, but if any of the lands now claimed were certified or patented to the company for work done during the period between the dates of the acts of March 3rd,
1035 1865, and July thirteenth, 1866, they can not be treated as patented in lieu of lands deficient in other sections of ten or twenty miles. And the masters having, by supplemental report, found that
346 all of the lands lying within coterminous limits of that portion of said road constructed between said dates, except two hundred and forty and 15-100 acres, were certified to the State and conveyed to the defendant company prior to the passage of the act

of March 3rd, 1865, and under the act of March 3rd, 1857, and that no lands lying within said limits were taken to make up defi- 1036
ciencies in any other section of ten miles than that opposite and coterminous to which they lay.

Now, therefore, it is ordered and decreed that the defendant specifically perform the contract in suit, and do convey forthwith to the plaintiffs, or such persons as a majority of them may appoint, in addition to those already conveyed, one hundred and ninety-seven thousand one hundred and eleven acres and sixty-one and one-half hundredths of an acre, the same being fully described by sections, townships, and ranges in the subjoined list and description, and that said defendant do convey as aforesaid each and every 1037
tract of land described in said list, subject to the exceptions and reservations hereinbefore stated; and it is further ordered and decreed that plaintiffs do recover of the defendant their costs and disbursements in this action, to be taxed by the clerk.

R. R. NELSON, *Judge*.

Whereupon the defendant prayed an appeal, and an appeal is allowed upon the filing within the time prescribed by law a bond, 1038
with sufficient sureties, to be approved by one of the judges of this court, in the sum of $1,000, in case no supercedeas is desired, but in case a supercedeas is desired, then in the sum of $10,000, to be approved as aforesaid.

R. R. NELSON, *Judge*.

347 United States circuit court, district of Minnesota.

ASHBEL H. BARNEY, JESSE HOYT, ALFRED M. Hoyt, Samuel N. Hoyt, William G. Fargo, N. C. Barney, Charles T. Barney, Angus Smith, Benjamin P. Cheney, Lucy L. Barney, N. C. 1039
Barney, Sarah B. Sturges, Belle D. Gurnee, H. S. Barney, N. H. Barney, all children and heirs at law of said Danforth N. Barney, deceased, the said N. H. Barney being an infant, and appearing by H. W. Lamberton, his next friend; William H. Latham and Edw. P. Latham, heirs at law of Charles F. Latham, deceased; James C. Fargo, Franklin D. Locke, and Charles Fargo, executors of the last will and testament of William G. Fargo, deceased; Charles T. Barney and Helen T. Barney, heirs at law of Ashbel H. 1040
Barney, deceased; Samuel N. Hoyt, Alfred M. Hoyt, and James W. Jackson, executors of the last will and testament of Jesse Hoyt, deceased, and trustees and devisees under said will; Helen Maria Hoyt, widow of said Jesse Hoyt, and Mary Irene Hoyt, heir at law of said Jesse Hoyt,

vs.

THE WINONA AND ST. PETER R. R. COMPANY.

The original decree in this action entered at the December term of this court, 1880, to wit, on the 13th day of April, 1881, 1041

having been modified on appeal to the Supreme Court of the United States, and this court having undertaken to execute the mandate of the said Supreme Court by a decree modifying said original decree entered at the June term of said court, 1885,
348 to wit, on the 6th day of October, 1885, and the complainants having appealed from said modified decree to the Supreme Court of the United States, by which said last named modified decree was reversed, and the mandate of said Supreme
1042 Court having been filed in the office of the clerk of this court, whereby fifteen thousand acres and forty-five hundredths of an acre, in addition to the lands used for the track of the Winona & St. Peter Railroad Company for depots and other purposes necessary and incident to its operation, are ordered to be deducted from the number of acres to a conveyance of which from the defendant, the Winona & St. Peter Railroad Company, to the plaintiffs or such persons as a majority of them may appoint by the aforesaid decree of this court made at its December term, 1880, the plaintiffs were adjudged to be entitled, and a majority of the plaintiffs
1043 having requested that the conveyance of said lands be made to the Winona & St. Peter Land Company, a corporation organized under the laws of the State of Minnesota, and all the heirs at law and successors in interest of certain complainants herein deceased having been made parties to this suit;

Now, therefore, it is ordered and decreed that the defendant, the Winona & St. Peter Railroad Company, specifically performed the contract in suit, and do convey forthwith to the Winona & St. Peter Land Company, as a majority of the plaintiffs and
1044 a majority of the obligees in said contract have requested, in addition to the lands already conveyed, the lands in the said original decree, made at the December term, 1880, and the lists and descriptions subjoined thereto specifically described, being
349 one hundred and ninety-seven thousand one hundred and eleven acres and sixty and one-half hundredths of an acre less, and except fifteen thousand acres and forty-five hundredths of an acre, to wit, that the said defendant do convey to the said Winona & St. Peter Land Company the lands, a correct description
1045 of which, by sections, townships, and ranges, is contained in the subjoined list and description marked Schedule "A;" but excepting from said conveyance all lands used for the track of said railroad, to wit: A strip of land across each of said lands crossed by said railroad fifty feet in width on each side of the centre line of the main track of the Winona & St. Peter Railroad, as the same is now located and constructed, and any greater width, not exceeding one hundred feet in width, upon each side of said centre line, where necessary permanently to include all cuts, embankments, and ditches, and other works of said company necessary to secure and
1046 protect its main line of railroad, and all depot grounds at the several stations, and lands used for other purposes necessary and incident to the operation of said railroad, the same to be described by metes and bounds or other suitable description, and included in the exception to the grant of any section in which any of said

lands are situated. And it is further ordered and decreed that the complainants do recover of the defendant their costs and disbursements to be taxed by the clerk.

R. R. NELSON, *Judge.*

ST. PAUL, *March 7th, 1887.*

SCHEDULE A.

In T. No. one hundred and nine (109) N. of R. No. twelve (12), W. of the 5th P. M., viz: Lot No. three (3) of sec. No. thirty-five (35); also,

350 In T. No. one hundred and nine (109) N. of R. No. thirteen (13), W. of the 5th P. M., viz: The und. ½ of the NW. ¼ of the NE. ¼ of sec. No. thirty-three (33); also,

In T. No. one hundred and four (104) N. of R. No. nineteen (19), W. of the 5th P. M., viz: The und. ½ of the N. ½ of the NW. 1048
¼ of sec. No. twenty-nine (29); also,

In T. No. one hundred and six (106) N. of R. No. nineteen (19), W. of the 5th P. M., viz: The und. ½ of the W. ½ of the SW. ¼ of sec. No. thirteen (13); also,

In T. No. one hundred and seven (107) N. of R. No. nineteen (19), W. of the 5th P. M., viz: The und. ½ of the NE. ¼ of the SE. ¼ of sec. No. twenty-seven (27); also,

In T. No. one hundred and six (106) N. of R. No. twenty (20), 1049
W. of the 5th P. M., viz: The und. ½ of the SW. ¼ of the SW. ¼ of sec. No. thirteen (13); also,

In T. No. one hundred and twelve (112) N. of R. No. twenty-seven (27), W. of the 5th P. M., viz: The und. ½ of the E. ½ of the NE. ¼ and the und. ½ of the NW. ¼ of the NE. ¼ of sec. No. seventeen (17); also,

In T. No. one hundred and ten (110) N. of R. No. thirty-one (31), W. of the 5th P. M., viz: Lots numbered one (1), two (2), seven (7), and eight (8) of sec. No. nineteen (19); also,

In T. No. one hundred and thirteen (113) N. of R. No. thirty- 1050
one (31), W. of the 5th P. M., viz: The N. ½ of the SW. ¼ of sec. No. two (2); also,

351 In T. No. one hundred and eight (108) N. of R. No. thirty-two (32), W. of the 5th P. M., viz: All of sec. No. three (3); the E. ½ of the NE. ¼, the SW. ¼ of the NE. ¼, the NW. ¼, the SE. ¼, and the E. ½ of the SW. ¼ of sec. No. five (5); the SE. ¼ and the W. ½ of sec. No. seven (7); all of secs. numbered nine (9), seventeen (17), and nineteen (19); the N. ½ of the 1051
NE. ¼ and the N. ½ of the NW. ¼ of sec. No. twenty-nine (29); also,

In T. No. one hundred and nine (109) N. of R. No. thirty-two (32), W. of the 5th P. M., viz: The SE. ¼ and the SE. ¼ of the SW. ¼ of sec. No. twenty-one (21); lot No. two (2) of sec. No. twenty-three (23); lots numbered three (3), four (4), and five (5), and the SW. ¼ of the SW. ¼ of sec. No. twenty-five (25); SE. ¼ of the NE. ¼ and the W. ½ of sec. No. twenty-seven (27); the SW. ¼ of sec. No. thirty-one (31); the N. ½, the E. ½ of the SE. ¼, and 1052
the W. ½ of the SW. ¼ of sec. No. thirty-five (35); also,

In T. No. one hundred and seven (107) N. of R. No. thirty-three (33), W. of the 5th P. M., viz: The N. ½ of the NE. ¼ and the N. ½ of the NW. ¼ of sec. No. five (5); also,

In T. No. one hundred and eight (108) N. of R. No. thirty-three (33), W. of the 5th P. M., viz: All of sec. No. one (1); the NW. ¼ and the S. ½ of sec. No. three (3); all of secs. numbered
1053 five (5), seven (7), and nine (9), the N. ½, the N. ½ of the SE. ¼, the NE. ¼ of the SW. ¼ and the W. ½ of the SW. ¼ of sec No. eleven (11); all of sections numbered thirteen (13), fifteen (15), seventeen (17), nineteen (19), twenty-one (21), twenty-three
352 (23), and twenty-five (25); the E. ½ of the NE. ¼, the SW. ¼ of the NE. ¼, the SE ¼ and the W. ½ of sec. No. twenty-seven (27); all of secs. numbered twenty-nine (29) and thirty-one (31); the SW. ¼ of the NW. ¼ and the NW. ¼ of the SE. ¼, the S. ½ of the SE. ¼ and the SW. ¼ of sec. No. thirty-three (33); the
1054 NE. ¼, the E. ½ of the NW. ¼ and the NW. ¼ of the NW. ¼, the SW. ½ of the SE. ¼, the S. ½ of the SW. ¼, and the NW. ¼ of the SW. ¼ of sec. No. thirty-five (35); also,

In T. No. one hundred and nine (109) N. of R. No. thirty-three (33), W. of the 5th P. M., viz: The N. ½ of the SE. ¼ of sec. No. nineteen (19); all of sec. No. twenty-five (25); the E. ½ of the SE. ¼ of sec. No. twenty-seven (27); lots numbered two (2) and three (3) and the NW. ¼ of the SE. ¼ of sec. No. thirty-one (31);
1055 the NE. ¼, the W. ½ of the SE. ¼ and the SW. ¼ of sec. No. thirty-three (33); the N. ½ of sec. No. thirty-five (35); also,

In T. No. one hundred and ten (110) N. of R. No. thirty-three (33), W. of the 5th P. M., viz: The SE. ¼ of sec. No. thirty-one (31); also,

In T. No. one hundred and seven (107) N. of R. No. thirty-four (34), W. of the 5th P. M., viz: The N. ½ of the NE. ¼ and the N. ½ of the NW. ¼ of sec. No. one (1); the N. ½ of the NE. ¼
1056 and the N. ½ of the NW. ¼, the und. ½ of the S. ½, the und. ½ of the S. ½ of the NE. ¼, and the und. ½ of the S. ½ of the NW. ¼ of sec. No. three (3); the N. ½ of the NE. ¼ and the N. ½ of the NW. ¼, the und. ½ of the S. ½, the und ½ of the S. ½ of the NE. ¼, and the und ½ of the S. ½ of the NW. ¼ of sec. No. five (5); the
353 und. ½ of all sections numbered seven (7), nine (9), fifteen (15), seventeen (17), nineteen (19), and twenty-one (21); the und. ½ of the N. ½ of sec. No. twenty-seven (27), and the und. ½ of all of sec. No. twenty-nine (29); also,

In T. No. one hundred and eight (108) N. of R. No. thirty-four
1057 (34), W. of the 5th P. M., viz: The S. ½ of sec. No. one (1); the S. ½, the NE. ¼, and the S. ½ of the NW. ¼ of sec. No. three (3); all of secs. numbered five (5) and seven (7); the N. ½ of the NE. ¼ of sec. No. eight (8); all of sec. No. nine (9); the NE. ¼ of the NE. ¼ and the W. ½ of the NE. ¼, the NW. ¼ of the SE. ¼, the S. ½ of the SE. ¼, and the W. ½ of sec. No. thirteen (13); the E. ½ and the E. ½ of the NW. ¼, the E. ½ of the SW. ¼, and the SW. ¼ of the SW. ¼ of sec. No. fifteen (15); the NW. ¼ of the NE. ¼
1058 and the S. ½ of the NE. ¼, the N. ½ of the SE. ¼, and the W. ½ of sec. No. seventeen (17); all of sec. No. nineteen (19); the E. ½

and the NW. ¼ of the NW. ¼, the S. ½ of the NW. ¼, and the SW. ¼ of sec. No. twenty-one (21); all of secs. numbered twenty-three (23), twenty-five (25), twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three (33), and thirty-five (35); also,

In T. No. one hundred and nine (109) N. of R. No. thirty-four (34), W. of the 5th P. M., viz: All the secs. numbered three (3) and five (5); the E. ½ of the SW. ¼, the E. ½ of the NW. ¼, and the SW. ¼ of the NW. ¼ of sec. No. seven (7); all of sec. No. nine 1059
(9); the E. ½, the NW. ¼, and the N. ½ of the SW. ¼ of sec. No. fifteen (15); the N. ½, the E. ½ of the SE. ¼, and the W. ½ of the SW. ¼ of sec. No. seventeen (17); the NW. ¼ of sec. No.
354 nineteen (19); all of secs. numbered twenty-one (21), twenty-seven (27), twenty-nine (29), thirty-one (31), and thirty-three (33); also,

In T. No. one hundred and ten (110) N. of R. No. thirty-four (34), W. of the 5th P. M., viz: The SW. ¼ of the SW. ¼ and lots numbered four (4), five (5), and six (6) of sec. No. three (3); all 1060
of sec. No. five (5); the N. ½, the SW. ¼, and the W. ½ of the SE. ¼ of section No. seven (7); all of sec. No. nine (9); the E. ½, the E. ½ of NW. ¼, and the SW. ¼ of the NW. ¼, the E. ½ of the SW. ¼ and the SW. ¼ of the SW. ¼ of sec. No. fifteen (15); all of secs. numbered seventeen (17), nineteen (19), and twenty-one (21); the N. ½ and SE. ¼, the E. ½ of the SW. ¼, and the SW. ¼ of the SW. ¼ of sec. No. twenty-seven (27); all of secs. numbered twenty-nine (29), thirty-one (31), and thirty-three (33); also,

In T. No. one hundred and eleven (111) N. of R. No. thirty- 1061
four (34) W. of the 5th P. M., viz: Lot No. two (2), the W. ½ of the NE. ¼ and the SE. ¼ of the NE. ¼, the SE. ¼, and the W. ½ of sec. No. thirty-one (31); lot No. nine (9) of sec. No. thirty-three (33); also,

In T. No. one hundred and twelve (112) N. of range No. thirty-four (34), W. of the 5th P. M., viz: The NW. ¼ of the SE. ¼ of sec. No. three (3); also,

In township No. one hundred and five N. of range No. thirty-five (35), W. of the 5th P. M., viz: The NW. ¼ of the SE. ¼ and 1062
the NE. ¼ of the SW. ¼ of sec. No. six (6); also,

In township No. one hundred and seven (107) N. of range
355 No. thirty-five (35), W. of the 5th P. M., viz: The N. ½ of the NE. ¼, the NW. ¼ and the N. ½ of the SW. ¼ of sec. No. one (1); the undivided one-half of the SE. ¼, the undivided one-half of the S. half of the NE. ¼, and the undivided one-half of the S. half of the SW. ¼ of sec. No. one (1); the N. half, the N. half of the SE. ¼ and the N. half the the SW. ¼, the undivided ½ 1063
of the S. half of the SE. ¼, and the undivided ½ of the S. half of the SW. ¼ of sec. No. three (3); all of sec. No. five (5); the N. half of the NE. ¼ and the N. half of the NW. ¼, the undivided ½ of the S. half, the undivided ½ of the S. half of the NE. ¼, and the undivided ½ of the S. half of the NW. ¼ of sec. No. seven (7); the N. half of the NE. ¼ and the N. half of the NW. ¼, the undivided ½ of the S. half, the undivided ½ of the S. half of the NE. ¼, and the undivided ½ of the S. half of the NW. ¼ of sec. No.

1064 nine (9); the undivided ½ of all of sections numbered eleven (11), thirteen (13), fifteen (15), seventeen (17) nineteen (19), twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven (27), twenty-nine (29), and thirty-one (31), and the undivided ½ of the N. half of sec. No. thirty-three (33); also,

In township one hundred and eight (108), N. of range No. thirty-five (35), W. of the 5th P. M., viz: The E. half of sec. No. one (1); the E. half and the NW. ¼ of sec. No. five (5); all of sections
1065 numbered seven (7), nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17), nineteen (19), twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three (33), and thirty-five (35); also,

356 In township No. one hundred and nine (109) N. of range No. thirty-five (35), W. of the 5th P. M., viz: The N. half, the N. half of the SE. ¼, and the N. half of the SW. ¼, the SW. ¼ of the SE. ¼, and the SW. ¼ of the SW. ¼ of sec. No. one
1066 (1); the N. half and the SW. ¼, the N. half of the SE. ¼, and the SE. ¼ of the SE. ¼ of sec. No. three (3); all of sections numbered five (5), seven (7), nine (9), eleven (11), thirteen (13), fifteen (15); the S. half and the S. half of the NE. ¼, the SW. ¼ of the NW. ¼, and the NE. ¼ of the NE. ¼ of sec. No. seventeen (17); the N. half and the SW. ¼, the N. half of the SE. ¼ and the SW. ¼ of the SE. ¼ of sec. No. nineteen (19); all of sec. No. twenty-one (21); the N. half and the SW. ¼ of sec. No. twenty-three (23); the W. half and the SE. ¼, the W. half of the NE. ¼ and the NE.
1067 ¼ of the NE. ¼ of sec. No. twenty-seven (27); all of sections numbered twenty-nine (29) and thirty-one (31); also,

In township No. one hundred and ten (110) N. of range No. thirty-five (35) W. of the 5th P. M., viz: All of sections numbered one (1), three (3), five (5), and seven (7); the S. half and the NW. ¼, the W. half of the NE. ¼ and the SE. ¼ of the NE. ¼ of sec. No. nine (9); all of sections numbered eleven (11), thirteen (13), fifteen (15), seventeen (17), nineteen (19), twenty-one (21),
1068 twenty-three (23), twenty-five (25), twenty-seven (27), twenty-nine (29), and thirty-one (31); the E. half of the NE. ¼ and the SW. ¼ of the NE. ¼, and the NW. ¼ and the S. half of sec. No. thirty-three (33), and all of sec. No. thirty-five (35); also,

357 In township number one hundred and eleven (111) N. of range No. thirty-five (35), W. of the 5th P. M., viz: Lot number two (2) of sec. No. five (5); the E. half, the NW. ¼ and the E. half of the SW. ¼ of sec. No. seven (7); lots numbered five (5), ten (10), and eleven (11) of sec. No. nine (9); lots numbered
1069 five (5) and six (6) and the S. ½ of the SW. ¼ of sec. No. fifteen (15); all of secs. numbered seventeen (17) and nineteen (19); the NW. ¼, the W. ½ of the NE. ¼, and the NE. ¼ of the NE. ¼, the N. ½ of the SW. ¼, the SW. ¼ of SW. ¼, and the SE. ¼ of sec. No. twenty-one (21); the SW. ¼ of the NW. ¼ and the N. ½ of the SW. ¼, the SE. ¼ of the SW. ¼, the SW. ¼ of the SE. ¼, and lots numbered five (5), six (6), seven (7), eight (8), and nine (9) of sec. No. twenty-three (23); the S. ½ and lots numbered four (4), five
1070 (5), and (6), the S. ½ of the NW. ¼ and the NW. ¼ of the NW. ¼

of sec. No. twenty-five (25); the N. ½ and SE. ¼, the N. ½ of the SW. ¼, and the SE. ¼ of the SW. ¼ of sec. No. twenty-seven (27); the S. ½, the NW. ¼, and the S. ½ of the NE. ¼ of sec. No. twenty-nine (29); all of secs. numbered thirty-one (31) and thirty-three (33); the S. ½ and the NW. ¼, the W. ½ of the NE. ¼, and the SE. ¼ of the NE. ¼ of sec. No. thirty-five (35); also,

In T. No. one hundred and six (106) N. of R. No. thirty-six (36), W. of the 5th P. M., viz: The und. ½ of the N. ½ of sec. 1071
No. one (1); the und. ½ of the N. ½ of sec. No. three (3), and the und. ½ of the N. ½ of sec. No. five (5); also,

In T. No. one hundred and seven (107) N. of R. No.
358 thirty-six (36), W. of the 5th P. M., viz: All of secs. No. one (1), three (3), five (5), seven (7), and nine (9); the N. ½ of the NE. ¼ and the N. ½ of the NW. ¼, the und. ½ of the S. ½, the und. ½ of the S. ½ of the NE. ¼, and the und. ½ of the S. ½ of the NW. ¼ of sec. No. eleven (11); the und. ½ of all of secs. No. thirteen (13) and fifteen (15); the N. ½ of the NE. ¼ and the 1072
N. ½ of the NW. ¼, the und. ½ of the S. ½ of the NE. ¼, the und. ½ of the S. ½ of the NW. ¼, and the und. ½ of the S. ½ of sec. No. seventeen (17); the und. ½ of all of secs. numbered nineteen (19), twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three (33), and thirty-five (35); also,

In T. No. one hundred and eight (108) N. of R. No. thirty-six (36), W. of the 5th P. M., viz: All of sec. No. one (1); the E. ½ of sec. No. two (2); all of secs. numbered three (3), five (5), seven 1073
(7), nine (9), eleven (11), thirteen (13), and fifteen (15); the N. ½, the N. ½ of the SE. ¼ and the N. ½ of the SW. ¼ of sec. No. seventeen (17); all of secs. numbered nineteen (19), twenty-three (23), twenty-five (25), twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three (33), and thirty-five (35); also,

In T. No. one hundred and nine (109) N. of R. No. thirty-six (36), W. of the 5th P. M., viz: All of secs. numbered one (1), three (3), five (5), seven (7), nine (9), and eleven (11); the S. ½ of the SE. ¼ of sec. No. twelve (12); all of secs. numbered thirteen 1074
(13), fifteen (15), and seventeen (17); the NW. ¼ and the NW. ¼ of the SW. ¼ of sec. No. nineteen (19); the N. ½ and the SE. ¼ of sec. No. twenty-one (21); the N. ½ and the N. ½ of the SE.
359 ¼, the SW. ¼ of the SE. ¼ and the SW. ¼ of sec. No. twenty-three (23); all of secs. numbered twenty-five (25) and twenty-seven (27); the E. ½, the SW. ¼, and the E. ½ of the NW. ¼ of sec. No. twenty-nine (29); all of secs. No. thirty-one (31); the NE. ¼ and the S. ½ of sec. No. thirty-three (33); and all of 1075
sec. No. thirty-five (35); also,

In T. No. one hundred and ten (110) N. of R. No. thirty-six (36), W. of the 5th P. M., viz: All of secs. numbered one (1), three (3), five (5), seven (7), nine (9), and eleven (11); the S. ½, the S. ½ of the NE. ¼ and the NW. ¼ of the NE. ¼, the S. ½ of the NW. ¼, and the NW. ¼ of the NW. ¼ of sec. No. thirteen (13); the N. ½, the N. ½ of the SE. ¼, the N. ½ of the SW. ¼, and the SW. ¼ of the SW. ¼ of sec. No. (15); all of secs. numbered seventeen (17), nineteen (19),

1076 and twenty-one (21); the NE. ¼ and the S. ½, the S. ½ of the NW. ¼, and the NE. ¼ of the NW. ¼ of sec. No. twenty-three (23); the S. ½ of sec. No. twenty-four (24); all of secs. numbered twenty-five (25) and twenty-seven (27); the E. ½ of the SW. ¼ and the SW. ¼ of the SW. ¼ of sec. No. twenty-eight (28); the N. ½ of the NE. ¼ and the SW. ¼ of the NE. ¼, the NW. ¼, and the S. ½ of sec. No. twenty-nine (29); all of secs. numbered thirty-one (31), thirty-three (33), and thirty-five (35); also,

1077 In T. No. one hundred and eleven (111) N. of R. No. thirty-six (36), W. of the 5th P. M., viz: Lots numbered three (3) and four (4) and the S. ½ of the NE. ¼, the SE. ¼, and the W. ½ of sec. No. one (1); the S. ½ and the S. ½ of the NE. ¼, the NE. ¼ of
360 the NE. ¼, and the S. ½ of the NW. ¼ of sec. No. three (3); the NE. ¼ and the S. ½, the S. ½ of the NW. ¼, and the NW. ¼ of the NW. ¼ of sec. No. five (5); all of sec. No. seven (7); the SE. ¼, the NW. ¼, and the S. ½ of the NE. ¼, the NW. ¼ of the NE. ¼, the S. ½ of the SW. ¼, and the NE. ¼ of the SW. ¼ of
1078 sec. No. nine (9); all of sec. No. eleven (11); the N. ½ of the NE. ¼ and the SW. ¼ of the NE. ¼, the NW. ¼, and the S. ½ of sec. No. thirteen (13); all of sec. No. fifteen (15); the NW. ¼ of the NE. ¼ and the S. ½ of the NE. ¼, the NW. ¼ and the S. ½ of sec. No. seventeen (17); all of sec. No. nineteen (19); the N. ½, the N. ½ of the SE. ¼, the SW. ¼ of the SE. ¼, and the SW. ¼ of sec. No. twenty-one (21); the N. ½ of the NE. ¼ and the SW. ¼ of the NE. ¼, the NW. ¼, and the S. ½ of sec. No. twenty-three (23); all of secs. numbered twenty-five (25), twenty-seven (27), twenty-
1079 nine (29), thirty-one (31), and thirty-three (33); the S. ½, the NW. ¼, and the W. ½ of the NE. ¼ of sec. No. thirty-five (35); also,

In T. No. one hundred and twelve (112) N. of R. No. thirty-six (36), W. of the 5th P. M., viz: The S. ½ of sec. No. thirty-three (33); lots numbered five (5), six (6), and seven (7), and the SW. ¼, the S. ½ of the NW. ¼, and the W. ½ of the SE. ¼ of sec. No. thirty-five (35); also,

In. T. No. one hundred and six (106) N. of R. No. thirty-seven
1080 (37), W. of the 5th P. M., viz: The und. ½ of the N. ½ of sec. No. one (1); the S. ½ of the NE. ¼, the S. ½ of the NW. ¼, and the S. ½ of the SE. ¼ of sec. two (2); the und. ½ of the E. ½ of the NE. ¼ and the und. ½ of the SW. ¼ of the NE. ¼; the und ½ of the N. ½ of the NW. ¼, and the und. ½ of the SW. ¼
361 of the NW. ¼, and the und. ½ of lots numbered four (4) and (5) of sec. No. three (3); the S. ½ of the NE. ¼ of sec. No. four (4); the und. ½ of the E. ½ of sec. No. five (5); also,

In T. No. one hundred and seven (107) N. of R. No. thirty-
1081 seven (37), W. of the 5th P. M., viz: All of secs. numbered one (1) and three (3); the E. ½ of sec. No. five (5); all of secs. numbered nine (9) and eleven (11); the N. ½ of the NE. ¼ and the N. ½ of the NW. ¼, the undivided ½ of the S. ½, the undivided ½ of the S. ½ of the NE. ¼, and the undivided ½ of the S. ½ of the NW. ¼ of sec. No. thirteen (13); the N. ½ of the NE. ¼ and the N. ½ of the NW. ¼, the undivided ½ of the S. ½, the undivided ½ of the S. ½ of the NE. ¼, and the undivided ½ of the S. ½ of the NW. ¼ of

sec. No. fifteen (15); the E. ½ of sec. No. seventeen (17); the undivided ½ of all sections numbered twenty-one (21), twenty-three 1082
(23), twenty-five (25), twenty-seven (27); the undivided ½ of the NE. ¼, the undivided ½ of the N. ½ of the SE. ¼, and the undivided ½ of the SE. ¼ of the SE. of sec. No. twenty-nine (29); the undivided ½ of the N. ½ of the NE. ¼ and the undivided ½ of the SW. ¼ of the NE. ¼, the undivided ½ of the NW. ¼, and the undivided ½ of the S. ½ of sec. No. thirty-three (33); the E. ½ of the NW. ¼ and the NW. ¼ of the NW. ¼ of sec. No. thirty-four (34), and the undivided ½ of all of section numbered thirty-five (35); also,

In township No. one hundred and eight (108) N. of range No. 1083
thirty-seven (37), W. of the 5th P. M., viz: All of section numbered one (1) and three (3); the E. ½ of sec. No. five (5); all of sections numbered nine (9) and eleven (11); the N. ½ of sec.
362 numbered thirteen (13); all of sec. No. fifteen (15); the E. ½ of sec. No. seventeen (17); all of sections numbered twenty-one (21), twenty-three (23), twenty-five (25), and twenty-seven (27); the E. ½ of sec. No. twenty-nine (29); all of sections numbered thirty-three (33) and thirty-five (35); also, 1084

In township No. one hundred and nine (109) N. of range No. thirty-seven (37), W. of the 5th P. M., viz: All of sections numbered one (1), three (3), nine (9), eleven (11), thirteen (13), and fifteen (15); the E. ½ of sec. No. seventeen (17); all of sections numbered twenty-one (21), twenty-seven (27), thirty-three (33), and thirty-five (35); also,

In township No. one hundred and ten (110) N. of range No. thirty-seven (37), W. of the 5th P. M., viz: All of secs. numbered one (1) and three (3); the NE. ¼ of sec. five (5); all of sections numbered nine (9), eleven (11), thirteen (13), and fifteen (15); the 1085
SE. ¼ of sec. No. seventeen (17); all of sections numbered twenty-one (21), twenty-three (23), twenty-five (25), and twenty-seven (27); the E. ½ of sec. No. twenty-nine (29), and all of sections numbered thirty-three (33) and thirty-five (35); also,

In township No. one hundred and eleven (111) N. of range No. thirty-seven (37), W. of the 5th P. M., viz: All of section No. one (1); the S. ½ of the NE. ¼, the NW. ¼ and the SE. ¼, the NE. ¼ of the SW. ¼ and the SW. ¼ of the SW. ¼ of sec. three (3); the E. 1086
½ and the NE. ¼ of the NW. ¼ of sec. five (5); all of sec. No. nine (9); the NE. ¼ of the NE. ¼ and the SW. ¼ of the NE. ¼ of sec. No. ten (10); the N. ½ and the E. ½ of the SE. ¼, the NW.
363 ¼ of the SE. ¼, and the S. ½ of the SW. ¼ of sec. No. eleven (11); the E. ½ and the NW. ¼, the E. ½ of the SW. ¼, and the NW. ¼ of the SW. ¼ of sec. No. thirteen (13); the E. ½ and NW. ¼, the N. ½ of the SW. ¼, and the SW. ¼ of the SW. ¼ of sec. No. fifteen (15); the E. ½ of sec. No. seventeen (17); all of sec. No. twenty-one (21); the N. ½ of the NE. ¼ of sec. No. twenty- 1087
two (22); all of sections numbered twenty-three (23), twenty-five (25), and twenty-seven (27); the N. ½ of the NW. ¼ and the SE. ¼ of the NW. ¼ of sec. No. twenty-eight (28); the N. ½ of the NE. ¼, the SW. ¼ of the NE. ¼, and the SE. ¼ of sec. No. twenty-nine (29); all of sections numbered thirty-three (33) and thirty-five (35); also,

In township No. one hundred and twelve (112), N. of range No. thirty-seven (37), W. of the 5th P. M., viz: The W. ½ of the
1088 NE. ¼ and the SE. ¼ of sec. No. twenty-nine (29); the W. ½ of the NE. ¼, the SE. ¼ and the W. ½ of sec. No. thirty-three (33); containing in the aggregate, according to the United States survey thereof, one hundred and eighty-two thousand, one hundred and eleven and thirty and one-half hundredths (182,111.30½) acres.

United States circuit court, district of Minnesota.

ASHBEL H. BARNEY ET AL.
vs.
THE WINONA & ST. PETER RAILROAD COMPANY.

1089 I consent that the annexed decree may be entered as the final decree in the above entitled action.

Dated February 26th, 1887.

THOMAS WILSON,
Solicitor of Dft.

364 The foregoing records and papers were offered and received in evidence subject to the objection of the complainant that the same and each and every thereof were incompetent, immaterial, and irrelevant.

1090 The defendant, the Winona and St. Peter Land Company, then offered in evidence in its behalf the following copies of records in the cases of Ashbel H. Barney v. Thomas McOuatt and Thomas McOuatt v. Ashbel H. Barney.

United States circuit court, district of Minnesota.

ASHBEL H. BARNEY
1091 *vs.*
THOMAS MCOUATT.

Said plaintiff complains and alleges:

1. That the plaintiff and defendant are residents and citizens of different States, and not of the same State; that the plaintiff herein is a resident and citizen of the State of New York; and that the defendant is a resident and citizen of the said State of Minnesota; and that the matter in dispute herein exceeds in value the sum of six hundred dollars.

1092 2. That the plaintiff is the owner in fee simple of the following described tract of land, situated in the county of Nicollet, in
365 said district and State of Minnesota, to wit: The southwest quarter of section 29, in township one hundred and ten (110), range twenty-seven (27) west, and is entitled to the immediate possession thereof; and that said land is of the full value of twenty-five hundred dollars ($2,500.00).

1093 3. That said defendant is in possession of said land and unlawfully withholds the possession thereof from this plaintiff and claims the same adversely to this plaintiff.

Wherefore this plaintiff demands judgment against said defendant. (1.) For the possession of said premises. (2.) That plaintiff is entitled to the same in fee simple absolute. (3.) For dollars damages for withholding the same, and for costs and disbursements of suit.

WILSON & TAYLOR,
Pl'ff's Att'ys, Winona, Minn.

DISTRICT AND STATE OF MINNESOTA, 1094
County of Winona, ss:

Robert Taylor came before me personally and, being duly sworn, doth say that he is one of the attorneys in the above-entitled action; that the foregoing pleading is true to the best of his knowledge, information, and belief, and that the reason why this affidavit of verification is not made by said plaintiff is that he is absent from the county of Winona and from the district and State of Minnesota, where resides each of his attorneys, and further saith not. 1095

ROBERT TAYLOR.

Subscribed to before me this 1st day March, A. D. 1877.

[SEAL.] A. H. SNOW,
Notary Public, Minn.

366 United States circuit court, district of Minnesota.

ASHBEL H. BARNEY }
vs. }
THOMAS MCOUATT. } 1096

The defendant in the above-entitled action, respectfully answering the complaint of the plaintiff therein, denies that the plaintiff is the owner in fee simple or otherwise of the tract of land situated in the county of Nicollet, in said district and State of Minnesota described in said complaint, and denies that the plaintiff is entitled to the immediate or other possession thereof, and denies that siad land is worth twenty-five hundred dollars, or that it is of greater value than sixteen hundred dollars.

The defendant avers that he is and for ten years past *past* has been 1097
in the lawful possession of said tract of land, and denies that he unlawfully holds possession thereof from the plaintiff.

The defendant avers that said tract of land in the plaintiff's complaint described is and since the year of our Lord 1851 has been public lands of the United States; that the same was occupied and claimed by one Timothy White as a preemptioner on the 1st day of March, A. D. 1857, and that from that date to the present time said tract of land had been subject to an actual and bona 1098
fide preemption settlement claim and occupation and that a declaratory statement of that fact was duly made and filed in the proper land office of the United States on said first day of March, A. D. 1857, and has never been withdrrwn or cancelled, and
367 that since the month of August, in the year 1867, the defendant has been in the actual, lawful, and undisturbed

possession of said land as a preemptioner under the preemption laws of the United States, and that he has in all things complied with the terms and conditions thereof and is entitled to hold and enter the
1099 same under said preemption laws.

Wherefore the defendant demands judgment that the plaintiff take nothing by this action and that this action be dismissed; and for his costs and disbursements herein.

JOHN B. & W. H. SANBORN,
Def't's Attorneys.

ST. PAUL, *March 22, 1877.*

DISTRICT AND STATE OF MINNESOTA,
County of Ramsey, ss:

1100 John B. Sanborn, being first duly sworn, deposes and says that he is one of the attorneys for the defendant in the above entitled action; that he has read the foregoing answer, and that the same is true to the best of his knowledge, information, and belief, and that the reason why this affidavit of verification is not made by said defendant is that he is absent from the county of Ramsey, where resides each of his attorneys, and further saith not.

JOHN B. SANBORN.

Sworn to and subscribed before me this 23d day of March, A.
1101 D. 1877.

[SEAL OF COURT.] H. E. MANN, *Clerk.*

368 United States circuit court for the district of Minnesota. Term Minutes, December term, A. D. 1877. Dec. 20, 1877.

ASHBEL H. BARNEY)
1102 *vs.*)
THOMAS MCOUATT.)

This cause having been brought to trial before the court without a jury, and the parties having presented their proofs, and after argument submitted the same to the court, and the court having duly considered the matter, doth find all the issues joined therein in favor of the plaintiff; that as against the defendant the plaintiff is the owner in fee simple of the lands and premises described in the complaint in this action, and is entitled to the immediate pos-
1103 session thereof.

Whereupon it is by the court considered, ordered, and adjudged, that the plaintiff do have and recover of and from the defendant the possession of the following described tract of land situated in the county of Nicollet and State of Minnesota, to wit: The southwest quarter of section twenty-nine (29), in township one hundred and ten (110), range twenty-seven (27) west, the lands aforesaid, of which said plaintiff was so found to be and is hereby adjudged to be the owner in fee simple as against the defendant. And that
1104 the plaintiff also recover of and from the defendant his costs and

charges by him in and about his suit in this behalf expended, to be taxed, and that due process or processes do issue out of this court for the enforcement of this execution, but not, however, until
369 the expiration of forty days from date, for which time all proceedings under this judgment are stayed.

Costs, $37.75. Judgment record signed this twentieth day of December, A. D. 1877.

H. E. MANN, *Clerk.* 1105

United States circuit court, eighth circuit, district of Minnesota.

ASHBEL H. BARNEY, PLAINTIFF,
vs.
THOMAS MCOUATT, DEFENDANT.

You will please take notice that the defendant in the above-entitled action demands another trial therein, pursuant to the statute in such case provided and the rules of said court above named, 1106 and hereby and herewith tenders and pays all costs and damages recovered by the plaintiff herein upon the first trial of said cause.

JOHN B. and W. H. SANBORN,
Attorneys for Defendant, St. Paul, Minn.

To Messrs. WILSON and TAYLOR,
Attorneys for Plaintiff.

ST. PAUL, *June 10th, 1878.*

(Indorsed:) United States circuit court, district of Minnesota. 1107 Ashbel H. Barney vs. Thomas McOuatt. Demand for new trial. Due service of a copy of the within notice is hereby admitted this 14th day of June, A. D. 1878, with the payment of one
370 hundred and fifty-four dollars and fifty cents in full of all costs to date in said cause. John B. and W. H. Sanborn, defendant's att'ys; , pltf's. att'ys. Ashbel H. Barney vs. Thomas McOuatt. I have, the 14th day of June, 1878, received a 1108 copy of the within paper and $154.50 as costs in the above-entitled action. Thomas Wilson, pltf's. att'y.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, H. E. Mann, clerk of the circuit court of the United States of America for the district of Minnesota, do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is in my custody as such clerk, and that such copy 1109 is a correct transcript from such original.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at St. Paul, in said district, this seventeenth day of June, A. D. 1878.

[SEAL OF COURT.] H. E. MANN, *Clerk.*

(Indorsed:) Certified copy. Notice of trial and payment of costs, etc.

371 UNITED STATES CIRCUIT COURT,
District of Minnesota, ss:

The President of the United States of America to the marshal of
1111 the district of Minnesota, greeting:

Whereas judgment was rendered in the circuit court of the United States of America for the district of Minnesota on the twenty-eighth day of January, 1878, in an action then pending in said court between Ashbel H. Barney, plaintiff, and Thomas McQuatt, defendant, in favor of said plaintiff and against said defendant for the recovery by said plaintiff from said defendant of the possession of the following described real property, to wit: The following tract of land situated in the county of Nicollet and State of Minnesota, to wit, the southwest quarter of section twenty-nine (29),
1112 in township one hundred and ten (110), range twenty-seven (27) west, besides his costs and charges by him in and about his suit in that behalf expended, which were duly taxed on the first day of June, A. D. 1878, at thirty-seven dollars and seventy-five cents ($37.75).

And whereas said judgment for costs was duly docketed in said court on the first day of June, A. D. 1878.

And whereas the said sum of $37.75, the amount of said costs, is still due thereon, with interest from the first day of June, A. D.
1113 1878.

Therefore you are hereby commanded that you deliver the possession of the said real property to the said plaintiff, and that you satisfy the said sum of $37.75, with interest as aforesaid, out
372 of the personal property of the said defendant within your district. And if sufficient personal property cannot be found, then out of the real property within your district belonging to said defendant on the first day of June, A. D. 1878, the day when said judgment was docketed, or at any time thereafter, in whose hands
1114 soever the same may be. And return this execution within sixty days after its receipt by you to the clerk of said court.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at St. Paul, in the district of Minnesota, this tenth day of June, A. D. 1878.

[SEAL OF COURT.] H. E. MANN, *Clerk.*

WILSON & TAYLOR, *Plaintiff's Attorneys.*

(Indorsed:) Writ of possession. Filed June 18, 1878. H. E. Mann, clerk. By James E. Wildey.

1115 DISTRICT OF MINNESOTA, *ss:*

I hereby certify and return that after receiving the within writ, the notice hereto attached was duly served on me, and I therefore return this writ without any proceedings thereunder.

R. N. MCLAREN, *U. S. Marshal.*
By A. MORRIS, *Dep.*

373 United States circuit court for the district of Minnesota.
Term minutes, June term, A. D. 1879—June 19th, 1879.

ASHBEL H. BARNEY
vs.
THOMAS MCOUATT.

This cause having been brought to its second trial before the 1117
court without a jury, and the parties having presented their proofs and submitted the same to the court, and the court having duly considered the matter upon said proofs and stipulation of the defendant waiving and withdrawing his defense, doth find all the issues joined therein in favor of the plaintiff; that as against the defendant the plaintiff is the owner in fee simple of the lands and premises described in the complaint in this action and is entitled to the immediate possession thereof.

Whereupon it is by the court considered, ordered, and adjudged 1118
that the plaintiff do have and recover of and from the defendant the possession of the following-described tract of land, situated in the county of Nicollet and State of Minnesota, to-wit: The southwest quarter of section twenty-nine (29) in township one hundred and ten (110), range twenty-seven (27) west, the lands aforesaid of which the said plaintiff was so found to be, and is hereby adjudged to be, the owner in fee simple as against the defendant, and that his increased costs and charges by him in and about his suit in this behalf expended by reason of this second trial, and that due process 1119
or processes do issue out of this court for the enforcement of this judgment.

Judgment record signed this 20th day of June, A. D. 1879.

H. E. MANN, *Clerk.*

374 In the circuit court of the United States, eighth circuit, district of Minnesota.

THOMAS MCQUAT, COMPLAINANT,
vs.
ASHBEL H. BARNEY, DEFENDANT. 1120

Bill in equity.

To the Judges of the Circuit Court of the United States for the District of Minnesota, in the Eighth Circuit:

Thomas McQuat, of the county of Nicollet and State of Minnesota, and a citizen of the State of Minnesota, brings this, his bill, against Ashbel H. Barney, of the State of New York, and a citizen of the State of New York, and thereupon your orator complains and says:

2. That for nine years last past he has been in the continued peaceable and undisturbed possession and occupation of the south- 1121
east quarter of section twenty-nine (29) in township one hundred and ten (110) of range twenty-seven (27) west, situated in the

county of Nicollet and State of Minnesota, and that the said land and the improvements that he has made and now owns thereon is of the value of five hundred dollars.

And your orator avers that he entered upon said land and made his preemption settlement thereon in the year A. D. 1869; that he then was a naturalized citizen of the United States and the head of
1122 a family and without title or ownership to other land, and in all respects qualified and entitled to receive the benefits of the preemption law; and that immediately following his settlement upon said tract of land he built a house for the residence of him-
375 self and family, in which he and his family have since constantly resided, and that he has built barns, sheds, and outhouses on said land and fenced, ploughed, and tilled large portions of the said tract of land.

Your orator, further complaining, avers that said land is, and
1123 since the year A. D. 1851 has been, a portion of the public lands of the United States, subject to settlement and entry by preemption by any person thereunto qualified under the laws and subject to sale at the United States land office, located in 1857 at Henderson, Minnesota, and now at New Ulm, Minnesota, and that on or about the first day of June, A. D. 1872, he made application to the register and receiver of said land office to file his declaratory statement, setting forth and showing that he had made a settlement under the preemption laws of the United States upon said tract of
1124 land on the first day of June, A. D. 1872, and claimed the right to enter and purchase the same from the United States under said laws, and thereafterwards on the 31st day of May, A. D. 1876, he offered to prove the settlement, occupation, and improvement of said tract of land before and to the satisfaction of the United States register and receiver of said land office, and to pay for said land the price thereof as fixed by law, but that said officers then and there refused to hear said proofs, or to receive payment for said land, or to allow your orator to enter or pay for the same, and your ora-
1125 tor avers that he has always been ready and willing, and is now ready and willing, to prove up his settlement and occupation and to enter and pay for said lands.

And your orator avers that notwithstanding the premises
376 and the lawful possession of said premises and land by him as aforesaid, and his equitable title thereunto as aforesaid, and his right to the legal title thereof, the defendant in utter disregard of the said rights, did on the second day of March, A. D. 1877, cause to be commenced and instituted in the circuit court of
1126 the United States for the eighth circuit, district of Minnesota, an action of ejectment against your orator, wherein, after alleging that he, said defendant, was owner in fee simple of said land, he demanded the judgment of said court against your orator for the possession of said premises, and that he, said defendant, is entitled to the same in fee simple, and then and there caused a summons to be issued and served upon your orator in said action, as by the records and files of said court, ready to be produced, will more fully appear.

And your orator further complaining states he is informed and 1127
he avers the facts to be that said defendant claims to be vested with the legal title to said tract and parcel of land under and by virtue of a certain grant of lands, made by the Congress of the United States on the third day of March, A. D. 1857, to the Territory of Minnesota in and by "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said territory and granting public lands in alternate sections to the State of Alabama to aid in construction of a certain railroad in that State," and certain mesne conveyances 1128
from the grantee in said grant named to the said defendant; your orator admits that said tract and parcel of land is within six miles of said line of road running from Winona, via St. Peter,
377 to the mouth of the Big Sioux River as the same was definitely fixed, and avers that the same was definitely fixed through said Nicollet County and adjacent to the said tract of land on the seventeenth day of July, A. D. 1857, and not at any earlier or different time.

And your orator avers that at the time when said line of road at the place aforesaid was so definitely fixed, said tract of land was 1129
subject to a preemption settlement and claim by one Timothy White, who then and there resided upon said land, and who, on said seventeenth day of July, A. D. 1857, had the full legal right to prove up his said claim and enter and pay for said land under the preemption laws; and your orator avers that thereafter and in the month of June, A. D. 1872, said Timothy White, then being absent from said land, your orator made a settlement thereon and has continued to reside upon the same with his family, as aforesaid, to the present time. 1130

And your orator avers upon his information and belief that the Honorable Secretary of the Department of the Interior, notwithstanding the premises, has certified that said tract and parcel of land is a portion of the land granted to the Territory of Minnesota, under and by virtue of the act of Congress aforesaid, and that said grantee and those holding under the same and said defendant claim legal title to said land, under and by virtue of said certification and the mesne conveyances to the defendant aforesaid; and that the defendant relies upon said alleged legal title, so obtained 1131
as aforesaid, to oust your orator from the possession of said premises lawfully obtained and held by him as aforesaid, and seeks to prosecute and maintain his said suit in ejectment by means thereof.

378 All which actings, doings, and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury to your orator in the premises.

In consideration whereof and for as much as your orator can only have adequate relief in the premises in the honorable court where 1132
matters of this nature are relievable.

To the end, therefore, that the said Ashbel H. Barney, defendant, may, if he can, show why your orator should not have the relief hereby prayed, and may, according to the utmost of his knowl-

edge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises herein, but not upon oath or affirmation, the benefit whereof is expressly waived by your orator; and that the said defendant, who is plaintiff as
1133 aforesaid in said action at law, may be perpetually enjoined from further prosecuting the same, and that it may be declared, decreed, and adjudged that any right, title, interest, or claim that said defendant has in or to said land and premises he has and holds in trust for your orator and for his use and benefit; and that it be adjudged and decreed that said defendant transfer the same to your orator in a short day to be named by the court, free and clear from all incumbrances, or upon his failure so to do, that the decree of said court in the premises may be recorded in the office of the register of
1134 deeds of Nicollet County, and have all the force and effect of such a conveyance to your orator; and that it may be further adjudged and decreed that your orator is entitled to enter and purchase at the proper land office of the United States, at the minimum
379 price of the public lands of that class as fixed by law, said tract of land, upon satisfying the register and receiver thereof by proper proof that he is a qualified preemptor under the law and has complied with all the provisions of the preemption law in respect to said tract of land; and that your orator may have
1135 further relief in the premises as the nature of the circumstances of the case may require and to this honorable court may seem meet.

And may it please your honors to grant unto your orator the writ of injunction issuing out of and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and provided, directed to the said Ashbel H. Barney, defendant, commanding and restraining said defendant, his agents, attorney, and counsellors, from proceeding with or in the
1136 suit at law aforesaid, wherein the said defendant is plaintiff and your orator is defendant.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to said Ashbel H. Barney, defendant, commanding him on a day certain therein to be named, and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises and to stand to, perform, and abide such further order, direction, and
1137 decree as may be made against him.

And your orator, as in duty bound, will ever pray.

JOHN B. AND W. H. SANBORN,
Solicitors for Complainant.

JOHN B. SANBORN, *Of Counsel.*

380 UNITED STATES OF AMERICA, DISTRICT OF MINNESOTA,
State of Minnesota, County of Nicollet, ss:

Thomas McQuat, being first duly sworn, deposeth and saith that
1138 he is the complainant in the foregoing bill named, and has read the same and knows the contents thereof. That the said bill is true

of his own knowledge except as to those matters which are therein stated to be on his information and belief, and as to them he believes it to be true.

THOMAS MCQUAT.

Sworn to before me this 28th of May, A. D. 1877.

[SEAL.] LEWIS SWENSON,
Clerk of District Court, Nicollet Co., Minnesota.

In the circuit court of the United States, eighth circuit, district of Minnesota. 1139

THOMAS MCOUAT, COMPLAINANT,
vs.
ASHBEL H. BARNEY, DEFENDANT.

The answer of Ashbel H. Barney, defendant, to the bill of complaint of Thomas McOuat, complainant. This defendant reserving to himself all right of objection and exception to the said bill of complaint and to any and every averment and part thereof, for answer to the same saith: 1140

That this defendant has no knowledge or information whether the complainant has for nine years past, or for any other period of time (save only the eight months last past) been in any man-
381 ner in possession or occupation of the lands and premises described in the bill of complaint, to-wit, the southeast quarter of section twenty-nine (29), in township one hundred and ten (110), range twenty-seven (27), in the county of Nicollet and State of Minnesota, or any part thereof; or as to whether any occupation or possession thereof by complainant has been continued, peaceable 1141 or undisturbed, and defendant therefore denies every averment and allegation of said bill of complaint respecting such alleged possession and occupation, and defendant has no knowledge or information as to whether complainant has ever made any improvements of any kind on said land and expressly denies that he owns any improvements thereon; but admits that said land alone is of the value of at least five hundred dollars.

This defendant denies that said complainant made any preemption 1142 settlement on said land or any part thereof in 1869, or at any other time; and defendant has no knowledge or information as to what time complainant entered upon and took possession of said land; but defendant admits that he is now in possession thereof, but avers that both his entry upon and possession of the same is and always was wrongful and without any right, warrant, or authority whatever, and defendant has no knowledge or information as to whether the complainant is or ever has been a citizen of the United States, naturalized or otherwise, or a head of a family, or 1143 without title or ownership to other land, or in any manner qualified or entitled to receive the benefit of preemption law; or as to whether claimant ever built a house or other building or structure on
382 said land, or fenced, or plowed, or tilled any portion thereof, or resided thereon with his family.

Further answering said bill of complaint, defendant denies the averment thereof, "that said land is and since the year A. D. 1851
1144 has been a portion of the public lands of the United States subject to settlement and entry by preemption by any person thereunto qualified under the laws and subject to sale at the United States land office located in 1857 at Henderson, Minnesota, and not at New Ulm, Minnesota," and denies each and every allegation, statement, and part of said averment, and denies that at any time since the month of July, 1857, said lands have been public lands, or in any manner subject to entry, preemption, or sale, and this defendant has no knowledge or information as to whether said complain-
1145 ant ever made application to the register or receiver of any land office, or any officer or person, to file any declaratory statement of settlement under the preemption laws of the United States upon the said tract of land as in the bill of complaint stated, or otherwise, or even claimed the right to enter or purchase the same under said preemption laws, or in any manner; or as to whether he ever offered to prove any settlement, occupation, or improvement of said land, or to pay therefor, either in the bill of complaint stated or otherwise; and defendant therefore denies each and every one of
1146 the aforesaid allegations and every part and statement thereof.

The defendant admits that he has cause to be commenced and instituted, in the circuit court of the United States for the eighth circuit district of Minnesota, an action of ejectment against
383 the complainant substantially as in the bill of complaint set out for the purpose of obtaining possession of said premises, which action is still pending; and defendant admits and avers that he claims to be and is vested with the title in fee, legal and equitable, of the said tract of land and the whole thereof, under and by
1147 virtue of the grant of lands to the Territory and State of Minnesota made by the Congress of the United States in and by the act of Congress, approved March 3d, 1857, entitled "An act making a grant of lands to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," and the several acts of Congress amendatory thereof and supplementary thereto, and the several acts of the legislature of the Ter-
1148 ritory and the State of Minnesota hereinafter set out and recited; and the certification to the State of Minnesota of the same by the honorable Secretary of the Department of the Interior in said bill of complaint and hereinafter recited, and the certain mesne conveyances hereinafter set out.

And the defendant avers that said tract of land was and is part of the lands which were granted to the Territory of Minnesota by the acts of Congress aforesaid; and that they were so granted to aid in the construction of that certain railroad extending from
1149 Winona westwardly, by way of St. Peter, to the Big Sioux River, south of the 45th parallel of north latitude, which is the same road now known as the Winona and St. Peter Railroad; that the

line of said railroad was definitely staked out, fixed, and
384 located in July, 1857, and has been duly constructed,
equipped, and put into operation on such line within the
time and in the manner provided and required by the said several
acts of Congress relating thereto and by the several acts of the
legislature of the Territory of Minnesota and of the State of
Minnesota, hereinafter recited, and that said land, and every part 1150
thereof, is within six miles of said line of railroad as so definitely
located, fixed, constructed, and put into operation.

That under and by virtue of the act of the legislature of the
Territory of Minnesota, approved March 3rd, 1855, entitled "A
bill to incorporate the Transit Railroad Company," said the Transit
Railroad Company was created, organized, and incorporated with
all the powers, rights, privileges, immunities, and franchises
in said act of incorporation specified and granted; that by the act
of the legislature of the Territory of Minnesota, approved March 1151
22d, 1857, entitled "An *An* act to execute the trust created by an
act of Congress entitled 'An act making a grant of lands to the
Territory of Minnesota in alternate sections to aid in the construc-
tion of certain railroads in said Territory, and granting public lands
in alternate sections to the State of Alabama to aid in the construc-
tion of a certain railroad in said State,' and granting certain lands
to railroad companies therein named," said The Transit Railroad
Company was authorized and empowered to survey, locate, con-
struct, equip, and put into operation the aforesaid line of railroad; 1152
and there was to it granted, to aid in such construction of said road,
all the interest or estate, present or prospective, of the Territory,
or future State, of Minnesota, in and to said lands by vir-
385 tue of said grant of the Congress of the United States,
hereinbefore recited; that said The Transit Railroad was
one of the land-grant railroad companies mentioned in the amend-
ment of section ten of article nine of the constitution of the State
of Minnesota, and became entitled to and accepted the loan of the 1153
State credit of said State provided in said section of the constitu-
tion thereof, subject to the conditions and provisions of said sec-
tion as so amended, and subject to all the conditions and provisions
of the act of the legislature of the Territory of Minnesota,
approved August 12th, 1858, entitled "An act concerning land-
grant railroads," and the bonds of the State of Minnesota to the
amount of five hundred thousand dollars were issued and delivered
to it accordingly; that to secure the payment of the principal and
interest of said State bonds so delivered to it, said The Transit
Railroad Company issued and delivered to the State of Minnesota 1154
five hundred of its first-mortgage bonds of one thousand dollars
each, bearing interest at 7 per cent per annum, payable semi-
annually, and by its trust deed, duly executed and delivered, it
bargained, sold, transferred, and assigned to William Windom and
J. H. Harmon, as trustees, to be by them held in trust, the said
entire railroad of said company, built, or to be built, and all rights,
property, privileges, franchises, and immunities of said the Transit
Railroad Company, of every nature and kind whatsoever, which

was then owned or should be thereafter acquired or owned by it, and all the right, title, interest, claim, or demand, either legal or equitable, which it then had or should thereafter acquire in or to any of such lands so granted by said act of Congress approved March 3d, 1857, or under any of said acts of the legislature, and authorized them, in case said The Transit Railroad Company should fail to pay the principal or interest of said State bonds, or of said first-mortgage bonds, as the same become payable, to enter upon and take possession of all and singular, the rights, interest, property, franchises, and immunities granted in trust as aforesaid, and to sell and dispose of the same for the payment of said principal and interest as in said trust deed provided; and to make, execute, and deliver to the purchaser or purchasers good and sufficient deeds of conveyance of the same, and out of the moneys arising from such sale to pay the said principal and interest; and in case of the refusal or neglect of said trustees to enter upon and take possession of and sell said property, rights, franchises, and immunities, then the governor of the said State of Minnesota was, in and by said trust deed, authorized to make, or cause to be made, such sale and foreclosure for the purposes aforesaid; which said trust deed was duly filed and recorded in the office of the secretary of state, and is hereby referred to for greater certainty.

That said The Transit Railroad Company, long prior to January, 1860, had made default in the payment of the interest due on the aforesaid bonds; and said trustees, after such default, and long prior to and till said last-mentioned date, having neglected and refused to foreclose said trust deed, or sell the said property, lands, and franchises as they were so authorized and required to do, the governor of said State did, on the 23d of June, A. D. 1860, after having given due and legal notice thereof, cause to be sold, at public auction, and bid in and purchased for and in the name of the said State, all the property, rights, privileges, and franchises, and immunities pledged in and by said deed of trust, and did, on the 16th day of October, 1860, duly transfer and convey the same to the said State, which thereupon and thereby acquired and became the owner and possessed of all the rights, property, privileges, franchises, and immunities of every nature which The Transit Railroad Company ever owned or possessed; and on the 10th day of March, 1862, by an act of the legislature of said State of Minnesota, approved on that day, entitled "An act to facilitate the construction of a railroad from Winona westerly, by way of St. Peter," there was by said State granted, transferred, and continued to William Lamb, S. S. L'Homedieu, John W. Kirk, Herman Gebhart, and H. C. Stimson, as a board of directors of The Winona and St. Peter Railroad Company, and to their associates, successors, and assigns by said name of The Winona and St. Peter Railroad Company, all the property, interest, corporate rights, privileges, and franchises of, or which had ever belonged to or been owned by, said The Transit Railroad Company, or by said State, to be held by said The Winona and St. Peter Railroad

Company for the purposes and on the terms in said act provided. That on the 28th day of June, 1862, said Lamb, L'Homedieu, Kirk, Gebhard, and Stimson, under and pursuant to said act, met at Winona and duly organized as a board of directors of said The 1161
Winona and St. Peter Railroad Company, and duly accepted the said grant and the powers, privileges, rights, property, franchises, and immunities thereby granted and conferred, and assumed
388 and entered upon the duties imposed upon them as such directors; and, thereupon, said The Winona and St. Peter Railroad Company became and ever since has been a corporation, and entitled to and possessed of all the rights, benefits, privileges, property, franchises, and immunities which at any time before had been possessed by said The Transit Railroad Company, or which 1162
said State of Minnesota acquired by virtue of any and all of the proceedings aforesaid.

That under and pursuant to said several acts of Congress and said several acts of the legislature aforesaid, the tracts of land in the bill of complaint described and in dispute herein were duly withdrawn from market, and were, on or about the first day of December, 1862, pursuant to said several acts of Congress and of said legislature and the several acts supplementary to and amendatory of the same, duly certified by the honorable Secretary of the Department of the Interior of the United States to the State of 1163
Minnesota, for the purpose of aiding in the construction of the aforesaid line of railroad; that on or about the 26th day of February, 1872, pursuant to said several acts of Congress and said acts of said legislature and of the several acts amendatory thereof and supplementary thereto, the said lands in the bill of complaint described were, by a deed of conveyance thereof duly executed and delivered by the then governor of said State, acting for and in the name of said State, duly granted and conveyed for the purposes aforesaid to said The Winona and St. Peter Railroad Company in fee simple absolute; 1164
that on the 11th day *day* of September, 1872, for a valuable consideration, said The Winona and St. Peter Railroad Company,
389 by its proper officers thereunto duly authorized and empowered, did, by its deed of conveyance duly executed and delivered and recorded, convey the said land in fee to one Wilson C. Brown, and that on the 24th day of February, 1877, for a valuable consideration, said Wilson C. Brown, and his wife joining him, did, by their deed of conveyance duly executed and delivered, convey 1165
said land in fee to this defendant, who is still the owner thereof and entitled to the immediate possession thereof.

Further answering said bill of complaint, the defendant denies that at the time when said line of railroad was definitely fixed and located, or at any other time, said tract of land was subject to any preemption settlement or claim whatever, or that any person then resided thereon, or had any right to prove up any claim, or enter or pay for said land under the preemption laws or otherwise; and the defendant further denies each and every allegation of said bill 1166
of complaint not herein specifically admitted or qualified; and said

defendant further answering denies that the said complainant is entitled to the relief or any part thereof in said bill of complaint demanded.

And this defendant prays the same advantage of his aforesaid answer as if he had pleaded or demurred to the said bill of complaint; and this defendant prays leave to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ASHBEL H. BARNEY,
1167 *Defendant.*

WILSON & TAYLOR,
Solicitors for Defendant.

390 *Verification of attorney.*

STATE OF MINNESOTA,
Winona County, District of Minnesota, ss:

1168 Robert Taylor came before me personally, and being duly sworn doth say that he is the defendant's attorney in the above-entitled action; that the foregoing answer is true to the best of his knowledge, information, and belief, and that the reason why this verification is not made by said defendant is that he is absent from the district and State of Minnesota, where resides this affiant, his said attorney, and that said defendant resides in the city, county of New York and State of New York, as this affiant is informed and believes.

ROBERT TAYLOR.

Subscribed and sworn to before me on this day of July, A. D. 1877.

1169 [SEAL.] W. A. ALLEN, *Notary Public.*

United States circuit court for the district of Minnesota. Term minutes, December term, A. D. 1877. December 20th, 1877.

THOMAS MCOUATT
vs.
ASHBEL H. BARNEY. } Chancery A., No. 540.

1170 This cause came on for hearing upon bill, answer, and proofs, and was argued on the part of the plaintiff by John B. Sanborn, esq., and on the part of the defendant by Thomas Wilson, esq., and
391 submitted to the court, whereupon, after due consideration and advisement, it is by the court considered, ordered, and adjudged that the plaintiff's bill of complaint herein be, and the same is hereby, dismissed, and that the defendant recover of and from the plaintiff his costs and charges by him in and about his suit in this behalf expended, to be taxed, and that execution issue
1171 therefor.

UNITED STATES OF AMERICA,
District of Minnesota, Third Division, ss.:

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing with the original thereof, which is in my custody as such clerk, and that such copy is a correct copy of such original, and of the whole thereof, in the cause therein named. 1172

Witness my hand as clerk and the seal of said court.

Done at my office in St. Paul, Minnesota, this 5th day of January, A. D. 1894.

OSCAR B. HILLIS, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

[U. S. circuit court seal. District of Minnesota, third division.]

392 *Judgment record, U. S. circuit court.*

1174

Judgment debtor.	Judgment creditor.	Attys.	Costs.	Total.	Date. Mth.	Day.	Year.	Hour.	Docket.	Pg.	Remarks.
McOuatt, Thomas.	Ashbel H. Barney.	Wilson & Taylor.	$37.75	$37.75	June	1	1878	11.20 a. m.	B Law	264	Judgment rendered Dec. 20, 1877.
McOuatt, Thomas.	Ashbel H. Barney.	Wilson & Taylor.	116.82	116.82	June	1	1878	11.20 a. m.	A Ch.	540	Judgment rendered Dec. 20, 1877.

UNITED STATES OF AMERICA,
District of Minnesota, ss: 1175

I, Oscar B. Hillis, clerk of the United States circuit court for said district, do hereby certify that the foregoing is a true copy of the judgments entered in the judgment lien docket of this court in the two causes between Ashbel H. Barney, plaintiff, and Thomas McOuatt, defendant, and Thomas McOuatt, plaintiff, and Ashbel H. Barney, defendant, as fully as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at St. Paul, in said district, this 4th day of January, A. D. 1894.

OSCAR B. HILLIS, *Clerk*, 1176
By LOUISE B. TROTT, *Deputy*.

[U. S. circuit court seal. District of Minnesota, third division.]

393 The foregoing records and papers and each and every thereof were offered and received in evidence subject to the objection of complainant that the same and each and every thereof were incompetent, irrelevant, and immaterial. 1177

Stipulation as to taking testimony of witnesses at Sleepy Eye, Minnesota.

[Title of cause.]

It is hereby stipulated and agreed by and between the above-named complainant and the defendant, The Winona & St. Peter Land Company, that the said defendant may take on its behalf, commencing on the 15th day of November, 1893, the testimony of John A. Upson, John Girg, Christopher Mainzer, Wenzl Remiger, Plaasiuus
1178 Haala, Anton Fisher, Michael Schroepfer, Theodore Webber, Michael Sturm, Frank Augustin, Henry Kaehler, John Steltzer, Charles Feiser, Wolfang Prandl, George Pechtl, Wenzl Scheller, Frank Schroepfer, Karl Picke, Karl Fast, Joseph Sallmer, Frederick Alwein, William Straasburg, Ferdinand Trebesch, John Haala, John W. Kalbe, Claus Minert, Terry Krumlett, Frank Krumlett, Ludwig Remus, Fred Mielke, Frederick W. Horrmann, George L. Wagner, August Rogotzke, Heinrich Dohrmann, John Weber, John H. Weber, John Yaeger, George Scherrmann, Hans Knudson,
1179 Jacob Brust, Peter Yackel, William Geohring, at Sleepy Eye, Minnesota, before Isaac Gallagher, notary public; that said testimony may be taken by a stenographer, and when reduced to writ-
394 ing by such stenographer may be filed with William A. Spencer, special master to take testimony in the above-entitled cause, and by him reported to the court as evidence taken with the same effect and force as though it were taken before him, and that the testimony of said witnesses need not be signed by
1180 them respectively, but shall be certified by the stenographer taking the same as their testimony.

It is further stipulated and agreed that the parties hereto and each of them reserve each and every objection to each and every question addressed to said witnesses and each of them, and their answers thereto, which might or could be made by the parties hereto or either of them at the time of said taking, and that each and every objection which could or might be made by said parties hereto or either of them to any of the questions propounded to any of said
1181 witnesses may be made and urged by said parties hereto or either of them upon the hearing of said cause as fully and with the same effect as if such objections were made, taken, and entered at the time of the taking of said testimony.

Dated this 15th day of November, 1893.

ROBERT G. EVANS,
Spl. Asst. U. S. Atty., of Counsel for Complainant.

J. A. TAWNEY & H. M. LAMBERTON,
Solicitors and of Counsel for said Winona & St. Peter Land Co., Deft.

395 Pursuant to the foregoing stipulation said witnesses were produced, and testified as follows:

Witness JOHN A. UPSON, sworn:

Mr. LAMBERTON:

Question. What is your name?
1183 Answer. John A. Upson.

Q. How old are you?
A. Thirty years old.
Q. Are you a married man?
A. No.
Q. Are you a citizen of the United States?
A. Yes.
Q. One of the defendants in this suit of the United States against the Winona & St. Peter Railroad Company and others?
A. Well, yes; I suppose so. 1184
Q. Give a description of the land and the number of acres owned by you or contracted for by you which is involved in this suit.
A. I only bought forty acres of the land company; it is the SE. ¼ of the NE. ¼, I think, section 5, town. 103, range 32.
Q. Is that all the land that you own that is in controversy?
A. Yes, sir.
Q. Have you a deed for this land?
A. No, a contract.
Q. When did you purchase it? 1185
A. I couldn't tell you, exactly.
Q. About what year?
A. Oh, it was four years ago next June—June 1st, 1889.
396 Q. You purchased it from the Winona & St. Peter Land Company?
A. Yes, sir.
Q. How much did you pay for the land?
A. $10.00 an acre.
Q. Is it all paid for? 1186
A. No, sir.
Q. How much have you paid on the land?
A. When I bought the land I paid $102.00, I think it was—the first payment; and then I paid every payment since that; I don't just recollect what the payments are.
Q. Do you know how much is now due on the land?
A. No, I don't.
Q. During these four years that you have owned the land, have 1187 you paid the taxes on it?
A. Yes, sir.
Q. How much do the taxes amount to?
A. The taxes are something like from $2.65 to $2.75 each year.
Q. You have paid all the taxes during this time?
A. Yes, sir.
Q. When you purchased this land did you purchase it in good faith, believing that you were getting an absolute title in fee simple thereto?
A. Yes, sir; I did.
Q. When you purchased this land did you have any knowledge 1188 that the United States claimed this land or claimed to have any interest in the land?
A. Yes, sir; or I knew that the land had been filed on
397 years ago by other parties; that is all that I knew about it,

but I didn't have any faith in these parties getting the land as Government land.

Q. You didn't have any knowledge that the United States claimed the land?

A. No, sir.

1189 Q. Did you have any knowledge that anybody or any company disputed the title of the Winona & St. Peter Land Company to this land?

A. No, sir.

Q. At the time you purchased this land, did you have the records examined?

A. No, sir; I didn't.

Q. How long have you occupied this land?

A. Four years.

Q. Have you improved the land any?

A. Yes, sir.

1190 Q. What is the nature of the improvements that you have placed upon the land?

A. Part of it is fenced in as pasture and part of it I have under cultivation.

Q. Any buildings?

A. No, sir.

Q. How many acres have you under cultivation?

A. About fifteen.

Q. What is the value of your improvements?

A. Well, I should judge that they were worth $150.00.

1191 Q. When did you commence to cultivate this land?

A. I commenced to cultivate it the second year.

Q. How many acres did you break and cultivate that year?

398 A. I broke it all that year—all that is broken—and since then I have cultivated it all.

Q. How many acres?

A. About fifteen.

1192 Q. You have been occupying this land for the last four years?

A. Yes, sir.

Q. What do you consider the land, together with the improvements, worth?

A. From $15.00 to $18.00 an acre.

Mr. EVANS:

Q. You say that you bought this land about four years ago?

A. Yes, sir; in 1889.

Q. You did know that there was some question about the title to this land, parties having claimed to have filed on it several years ago?

1193 A. I knew that it had been filed on years ago.

Q. Under the homestead and preemption laws of the United States?

A. I suppose preempted.

Q. Did you not also know that at that time there was pending before the Department some proceedings relative to this filing?

A. No, sir.

Q. Who was it filed on it as a homestead?

A. Well, I think that the man's name was Jesse Wiggins, but am not sure.

Q. How did you find out that there had been a filing on this 1194
land?

A. Through his folks.

Q. Do they live in your neighborhood?

A. No, sir.

399 Q. Where do they live?

A. In the town of Stark.

Q. How did you come to find it out that he had a filing on this land?

A. By meeting with them and talked with them about it, and that is the way it came about.

Q. They told you that he had a claim against the land by reason 1195
of a filing on it?

A. Yes, sir.

Q. Did you enter into possession of this land before you bought it from the land company?

A. No, sir.

Q. Was there anything said by you to the agent of the land company about this filing at the time that you made application for it?

A. No, sir.

Q. Did you mention the fact that you had heard about it? 1196

A. No, sir; I didn't.

Q. Nothing about the rumor?

A. No, sir.

Q. You went on and bought it from the land company, knowing of this filing, without making any inquiry regarding it at all?

A. Yes, sir.

Q. A good deal of land throughout the neighborhood where you live came through this W. & St. P. Land Company, did it not?

Q. (Continued.) They used to own a good deal of it, didn't 1197
they?

A. Yes, sir.

Q. It has been the question there for some time, has it not, as to who had the title to the lands?

400 A. I don't know about that.

Q. You have heard it questioned as to whether the land company or the railroad company or the Government owned it—were entitled to it?

A. No, sir.

Q. You heard about this suit? 1198

A. Yes, sir; I have heard that there was question about certain pieces of land.

Q. You have heard considerable question about these pieces of land?

A. Yes, sir.

Q. It has been a matter of talk there for a long time—how many years?

A. Well, it has been the talk for eight or ten years.

1199 Q. That there was a question of the title of the railroad company and the land company to these lands that have been brought in this suit?

A. Yes, sir.

Q. It was claimed that they didn't belong to the railroad company, and that settlers had a right to them?

A. I don't know about that.

Q. Well, what was it?

A. All I know was that they claimed these certain pieces were Government land, and it was rather doubtful whether the company

1200 would hold them or the Government would get them.

Q. This was eight or ten years ago?

A. Yes, sir.

Q. That included this piece that you bought?

A. Yes, sir; I suppose so.

401 Q. Do you recollect, Mr. Upson, of ever having heard of a petition by the land company about these lands some six or seven years ago?

A. No, sir; I do not.

Mr. LAMBERTON:

1201 Q. You say that you heard one Jesse Wiggins had filed upon this land?

A. Yes, sir.

Q. They didn't claim that they had any title to the land?

A. No, sir; Jesse Wiggins was a son of John Wiggins, who at this time lived at Stark, and Jesse went into the Army and died there.

Q. And Jesse Wiggins filed on this land simply as a speculation, you heard?

A. That is all.

Q. He didn't care anything about it when the railroad didn't

1202 come near to the land?

A. I couldn't say as to that.

Q. His filing had been cancelled?

A. I had heard so; yes.

Q. The Wiggins family didn't pretend to claim that they had any title to this land?

A. They didn't to me; it was simply talked that they had done so and so.

Q. Giving you a sort of a history of the land; that was all?

A. Yes, sir.

1203 Q. When you bought this land you didn't suppose that anyone had any title to it?

A. No, sir; I didn't.

402 Q. Now, when you bought this piece of land, or before the commencement of this suit, you never heard that anyone claimed this land but the Winona & St. Peter Land Company?

A. No, sir.

Q. This neighborhood talk was merely a rumor?

A. Yes, sir; just circulated around among the people. 1204
Q. What you heard was that the Government claimed to have some interest in some land in this neighborhood?
A. Yes, sir.
Q. Your particular piece of land was not mentioned?
A. I don't know whether it come to that.
Q. They didn't mention your particular piece?
A. Why, no.
Q. When you bought the land you supposed that the land 1205
company had good title to it, and so you purchased it?
A. Yes, sir.
Q. Never had any doubt but what the land company had good title?
A. No, sir.

Mr. EVANS:

Q. But you did know that it had been the talk for years that there was a dispute?
A. Yes, sir; I had heard it.
Q. That had been going on for years?
A. For some time; yes, sir. 1206
Q. Now, in the talk that you heard was the land company mentioned at all, or was it that the Government owned the land?
A. Yes, sir.

403 Mr. LAMBERTON:

Q. Now, was not the rumor this, that the railroad company had too much land, and some was going back to the Government?
A. That is all.
Q. All this land was spoken of as railroad land?
A. Yes, sir. 1207
Q. That was the way it was designated?
A. Yes, sir.

Mr. Upson is dismissed, and Witness JOHN GIRG sworn.

Mr. LAMBERTON:

Q. What is your name?
A. John Girg.
Q. How old are you?
A. I guess thirty-eight.
Q. You are a married man? 1208
A. Yes, sir.
Q. Have a family?
A. Yes, sir.
Q. You are a citizen of the United States?
A. Yes, sir.
Q. You are one of the defendants in this action of the Government against the Winona & St. Peter Railroad Company?
A. Yes, sir.
Q. Give us a description of the land and the number of acres owned by you which is involved in this suit. 1209

A. The W. ½ of the NW. ¼, S. 25, T. 109, R. 33. Eighty acres.

Q. From whom did you purchase this land?

404 A. From the Winona & St. Peter Land Company.

Q. When did you purchase it?

A. In '89, I guess; about this time of the year.

Q. How much did you pay for it?

A. $1,000.00 for the eighty.

1210 Q. Is there any incumbrance on the land—any mortgage?

A. No.

Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto?

A. Yes, sir.

Q. When you purchased this land did you have any knowledge that the United States claimed said land, or claimed any interest in it?

A. No, sir; I didn't.

1211 Q. Did you have any knowledge that anybody but the land company claimed to own this land?

A. No; I didn't.

Q. Did you have the records examined in the register of deeds' office, to see who owned the land?

A. No, sir; I didn't—well, we did have a man examine the records to see if any one owned the land, and he told us the land company owned it.

Q. He examined the land for you—that is, the records?

A. Yes.

1212 Q. Do you live on this land?

A. No, sir.

Q. You cultivate it?

A. Yes, sir; I cultivate it.

Q. How long have you cultivated it?

405 A. I had some under cultivation before I bought it—in '79, I think; it was laying around there close to mine.

Q. You always intended to purchase it?

A. Yes, sir.

1213 Q. And you cultivated it ever since you commenced to cultivate it in '79, intending to buy it?

A. Yes, sir.

Q. And afterwards you did purchase it?

A. Yes, sir.

Q. How many acres of this land have you under cultivation?

A. I suppose about forty acres.

Q. What kind of improvements have you on the land?

A. I got it fenced.

1214 Q. What is the value of the improvements which you have placed upon this land?

A. About $250.00, I should think.

Q. How many acres did you break the first year?

A. Do you mean after I had bought it? About 15 acres.

Q. And that year how many acres did you have under cultivation?

A. I guess about forty acres altogether.

Q. And you have had forty acres under cultivation all the time?
A. Yes, sir. 1215
Q. How long have you paid the taxes on this land?
A. Ever since I bought it, in '89.
Q. And how much a year do your taxes run?
406 A. The first year I paid $10.60; since then, more every year.
Q. About how much did it run this year?
A. $12.00.
Q. How much last year?
A. I forget; but more than $10.00. 1216
Q. What do you consider this land worth, with the improvements?
A. About $1,500.00 (fifteen hundred dollars).

Mr. EVANS:

Q. This land of yours is in the NW. ¼ of S. 25, T. 109, R. 33?
A. Yes, sir.
Q. How near do you live to this land?
A. About half a mile.
Q. How long did you cultivate it before you bought it?
A. I cultivated it first in '79. 1217
Q. And you bought it in '89?
A. Yes, sir.
Q. Did you cultivate it all the time between '79 and '89?
A. Yes; most of the time.
Q. Have you paid all for it?
A. No, sir.
Q. Have you a deed or a contract?
A. Just a contract; not a deed.
Q. Do you know Mr. John McDermott?
A. Yes. 1218
Q. Where does he live?
A. He lives here in town.
Q. Did you ever hear of his having a claim to the land?
407 A. He had a shanty on it once.
Q. How long ago?
A. I can't remember; about the time he claimed it as a homestead.
Q. How many years ago?
A. About seven or eight.
Q. You had heard that there was a question between the United 1219 States and the railroad company or the land company as to the title to this land, haven't you?
A. Why, yes; it was talked all over; they thought that the company owned too much land.
Q. The talk was that the company owned too much land—more than it was entitled to?
A. Yes, sir.
Q. And you didn't know where this land was?
A. No, sir; it was guessed at; they never did know what town, 1220 but there was a great many questions about who owned the land.
Q. There were a great many different claimants to the land?

A. Yes, sir.

Q. This talk referred to lands in this county, and it was said that the United States claimed that the railroad company had received more land that it had a right to?

A. That was the talk; I don't know if anybody knew.

1221 Q. And this Mr. McDermott had built a shanty on this particular piece of land that you afterward bought from the land company, claiming that this was Government land?

A. I guess that was what he claimed.

408 Q. He was not living on it at the time you bought it?

A. No; he only had a shanty—had never lived on it; the wind blew it down.

1222 Q. This talk about the title to the land had been going on for years?

A. Yes, sir.

Q. Did you ever hear that there had been proceedings by the Government about this land?

A. About some pieces.

Q. When did you hear that?

A. Both before and after I bought the land; nobody said it was that particular eighty.

Q. You thought, didn't you, that it might; that this land might be included in that land that was in question?

1223 A. No, sir.

Q. How did you get your idea that it was not included?

A. We had a man go up to Tracy to see about it, and the man told us that it belonged to the land company.

Q. And had belonged to the railroad company from the United States?

A. Yes, sir.

Q. How long before you bought it did you have that man examine the records?

1224 A. Three or four years.

Q. Did he make a report, or simply say that it belonged to the land company?

A. That was all I heard him say; he said it was no show

409 for me to get it. Of course we was asking about it, and a Mr. Eustace (?) went to the land company and we got the answer that it belonged to the Winona & St. Peter Land Company, and there was no show of my getting it from the Government; that was what the man told me.

Q. You were thinking that the land could be homesteaded, and

1225 that was the way it came about?

A. Yes; there was a talk about its going back to the Government.

Q. Did you know that this land had been filed on a good many years ago?

A. No; well, of course it was filed on by Mr. McDermott, but I didn't know whether he had any papers in the land office or not.

Mr. LAMBERTON:

Q. You say you have a contract from the land company for this land?

A. Yes, sir. 1226

Q. That contract is that after you pay in full for the land you get a deed for it?

A. Yes, sir.

Q. Do you know how much you have already paid?

A. About $400.00.

Q. And you intend to pay the balance?

A. Yes, sir.

Q. Do you consider your contract as good as a deed when you get it paid for?

A. Yes, sir. 1227

Q. Now, before Mr. McDermott built a shanty on that land, you didn't know that anybody had filed a claim on this land?

A. No.

410 Q. You say seven or eight years ago a man built a shanty on this land?

A. Yes, sir.

Q. Did anybody ever live on it?

A. No; the shanty was only there about two weeks, and the wind 1228 blew it down.

Q. McDermott never claimed the lands after that?

A. No.

Q. Did he ever file any papers in the office?

A. No, sir.

Q. You spoke about conflicting stories; you had reference to just a general rumor or story about the railroad company getting too much land?

A. That was what I meant.

Q. You never heard of anyone having a claim to this particular piece of land but the land company?

A. That is all. 1229

Q. You never heard that this particular piece of land was involved in any proceedings in the land office, did you?

A. No; I never did.

Q. The substance of the story was that the railroad company had got too much land, and no particular pieces was mentioned?

A. Yes; they had got too much land.

Q. You had an attorney examine the records before you bought it?

A. Yes, sir. 1230

Q. What did he tell you?

A. He said there was no show for me to get it except I buy it from the Winona & St. Peter Land Company.

411 Q. You never heard that anybody but Mr. McDermott had a filing on this claim?

A. No.

Q. You never heard that this land was going back?

A. No, sir.

Q. You thought that the land company owned the land? 1231

A. Yes.

Q. And you paid the taxes on this land all these years believing that they owned it?

A. Yes, sir.
Q. You never had any doubt?
A. No, sir.
Q. Nobody ever told you that this land was not owned by the land company?
1232 A. No, sir; I just heard it talked about.

Mr. Girg is excused, and Witness CHRIS MAINZER sworn.

Mr. LAMBERTON:

Question. What is your name?
A. Chris Mainzer.
Q. How old are you?
A. Thirty-one years old.
Q. Are you a married man?
1233 A. Yes, sir.
Q. Have you a family?
A. No.
Q. You are a citizen of the United States?
A. Yes, sir.
412 Q. You are one of the defendants in this suit of the United States against the W. and St. P. Railroad Company and others?
A. Yes, sir.
Q. Give me a description of the land which you own or which
1234 you have contracted for, which is involved in this suit?
A. It is the E. ½ of the NE. ¼, S. 25, T. 109, R. 33.
Q. How many acres?
A. Eighty acres.
Q. When did you purchase this land?
A. Three or four years ago—April 17th, 1890.
Q. Who did you purchase it from?
A. The Winona & St. Peter Land Company.
Q. How much did you pay for the land?
A. $964.00.
1235 Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
A. Yes, sir.
Q. When you bought it, did you have any knowledge that the United States claimed any interest in it?
A. No, sir.
Q. Did you know that anyone disputed the title of the Winona & St. Peter Land Company to this land?
A. No, sir.
Q. You supposed that they owned the land?
1236 A. Yes, sir.
Q. This land was known as belonging to the land company for a number of years before you purchased it?
A. Yes, sir.
413 Q. They were the known owners out there?
A. Yes, sir.
Q. Do you live on this land?

A. Yes, sir.
Q. How long have you lived on this land?
A. Four years. 1237
Q. Have you cultivated it ever since you purchased it?
A. Yes.
Q. Have you any improvements on this land?
A. Yes, sir.
Q. What is the nature of the improvements you have placed upon it?
A. A house and barn and granary, and part of it fenced.
Q. How many acres of the land is under cultivation?
A. Fifty. 1238
Q. When did you commence to cultivate it?
A. About '88.
Q. How many acres did you break and cultivate the first year?
A. Ten acres the first year.
Q. How many the second year?
A. The rest was already broken.
Q. And you cultivated from the first about fifty acres of the land?
A. Yes, sir.
Q. You have paid the taxes on it ever since you purchased it? 1239
A. Yes, sir; for three years.
Q. About how much a year?
A. From $7.00 to $10.00 a year.
414 Q. No back taxes due on the land?
A. No, sir.
Q. What do you consider this land, together with the improvements, worth?
A. About $2,000.
Q. How much are the improvements, worth?
A. $500 or $600. 1240

Mr. Evans:

Question. Have you a deed for it?
A. No, a contract.
Q. How much have you paid?
A. Can't tell exactly.
Q. You say that all the land except ten acres was broken; who broke it?
A. I don't know; a man by the name of Fleisner was on it.
Q. How did he get on the land? 1241
A. I don't know; he built a house.
Q. Do you know what claim he had to it?
A. Never asked him.
Q. You heard the testimony of the witnesses before you; what about the talk—you heard this talk?
A. Yes, sir.
Q. How long have you been here?
A. Seven or eight years.
Q. That talk was to the effect that there was a dispute between the United States and the railroad company as to who owned the 1242

land; it was claimed that the land company didn't have a good title?

A. Yes, sir; that was what they said.

Q. You heard the talk before you bought?

A. Yes, sir.

415 Q. Do you know McDermott?

A. No, sir.

Mr. LAMBERTON:

Q. You say you bought a man by the name of Fleisner's improvements?

A. Yes, sir.

1243 Q. He was just a squatter?

A. Yes, sir.

Q. He didn't pretend to claim that he owned the land—didn't claim to have any title to the land?

A. No, sir.

Q. Just the same as if a man came and squatted on a piece of your land?

A. Yes, sir; just the same.

Q. That was what he claimed to you?

A. Yes, sir.

Q. Did he have any intention of purchasing the land from the

1244 land company when they offered it for sale?

A. I don't know.

Q. But you do know that he didn't claim to have any interest in the land?

A. Yes, sir.

Q. Now, you say there was a dispute between the United States and the railroad company; wasn't the rumor this way: You heard a story that the railroad company had got too much land, and this

1245 land of yours was not mentioned; this was just an indefinite story you heard out in that neighborhood; you didn't hear anything about the land company not owning it?

A. No; that was all.

Q. You don't understand English very well?

416 A. No; not very well.

Q. You didn't understand some of the questions asked you by the United States counsel, did you?

A. No.

Q. Now, just state what that story was.

1246 A. A story that the railroad company didn't have a good title.

Q. The land company was not mentioned?

A. The railroad company.

Q. When you purchased it, it was known as belonging to the land company?

A. Yes, sir.

Q. And you believed that the land company did own it?

A. Yes.

1247 Mr. EVANS:

Q. All this land generally was called railroad land?

A. Yes.

Mr. LAMBERTON:

Q. You knew that this was land company land—railroad land—not Government land?

A. Yes, sir.

Q. You signed an obligation to pay the full price of this land to 1248
the land company?

A. Yes, sir.

Q. And you expect to keep that obligation that you signed?

A. Yes.

417 Mr. Mainzer is excused and Witness WENZL REMIGER sworn.

Mr. LAMBERTON:

Q. What is your name?

A. Wenzl Remiger. 1249

Q. How old are you?

A. Fifty-two.

Q. Are you a married man?

A. Yes, sir.

Q. Have you got a family?

A. Yes, sir; a big family.

Q. Are you a citizen of the United States?

A. Yes, sir.

Q. You are one of the defendants in this case of the United States against the Winona & St. Peter Railroad Company and others?

A. Yes, sir. 1250

Q. Give a description of the land owned by you, or contracted for by you, which is involved in this suit.

A. It is the NW. ¼ of the NE. ¼, S. 3, T. 108, R. 32.

Q. How many acres do you own?

A. Eighty acres.

Q. Who did you purchase the land from?

A. The Winona & St. Peter Land Company.

Q. When did you purchase it?

A. In '89, I guess.

Q. How much did you pay for it? 1251

A. I paid $900 for the eighty—a little more than that.

Q. You have a deed for this land?

A. Yes, sir.

418 Q. There is no mortgage or incumbrance on this land?

A. No.

Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto? 1252

A. Yes.

Q. When you bought this land, did you have any knowledge that the United States claimed this land or claimed any title to it?

A. No.

Q. You didn't know that anybody or any corporation claimed to have any interest in it?

A. No, sir.

Q. It was generally known in your neighborhood that this land belonged to the land company?

1253 A. Yes, sir.

Q. Do you live on this land?

A. No.

Q. You occupy and cultivate it?

A. Yes, sir.

Q. How long have you occupied and cultivated it?

A. Some in section 35 I have occupied and cultivated twelve or thirteen years; had most of it broke before I bought it.

1254 Q. When you commenced to break this land and occupy it, you intended to buy it?

A. Yes, sir.

Q. How long have you occupied and cultivated the other piece of land?

A. Ten years ago; occupied it ever since.

419 Q. When you commenced to occupy that piece of land, you intended to purchase it?

A. Yes, sir.

Q. When you first commenced to occupy the land, it was not in

1255 the market—the land company didn't have it on the market?

A. No.

Q. As soon as it came into the market you bought it?

A. Yes.

Q. What kind of improvements have you put on it? You have the land fenced in?

A. In section 3.

Q. And seeded down? Is it broken?

A. Yes, sir.

1256 Q. How many acres of land have you under cultivation now?

A. Thirty-five acres in section 35.

Q. How many seeded down in section 3?

A. About twenty acres tame grass.

Q. How much are your improvements worth—what is the value?

A. I don't hardly know; fences about $150; breaking about $3.00 an acre, thirty-five acres.

Q. How much else?

A. About $70.

1257 Q. That would make about $290.00 altogether?

A. I guess so.

Q. Then the total amount of your improvements is about $290—or, no, it would be about $325.

A. Yes, that's it.

420 Q. How long have you paid the taxes on this land?

A. Four years.

Q. About how much a year?

1258 A. Let me see; I don't know how much a year;—it is $37.75 altogether.

Q. What do you consider this land, together with the improvements, worth?

A. About $20 an acre.

Mr. Evans:

Q. How long have you lived in that neighborhood?

A. Sixteen years, I guess.

Q. You have heard the witnesses testify about the talk that has been going on about the title to these lands, haven't you? You heard the other witnesses testify? 1259

A. Yes, sir.

Q. You have heard it for years?

A. Yes, sir.

Q. You have heard that the United States claimed to own these lands?

A. Yes, sir.

Q. And these particular lands that you bought from the land company, were they not?

A. Yes, sir.

Q. You know John Lind?

A. Yes, sir. 1260

Q. Do you recollect a petition that was sent down to Mr. Lind in Congress about this land? You signed a paper, didn't you?

A. I don't know.

421 Q. Didn't you have something to do with the question as to the title to these lands?

A. No, sir.

Q. Now recollect, because I want to know. Didn't you try to get the land from the Government once?

A. They was after that in 35. 1261

Q. Wasn't Lent after that in 3?

A. George Lent.

Q. Now, didn't you one time in '87—didn't you sign a paper which was to be sent down to Washington?

A. No.

Q. Are you sure of that?

A. Yes.

Q. Didn't you think that this land belonged to the United States?

A. I didn't know who it belonged to; I thought it belonged to 1262 the land company.

Q. Didn't hear it talked that it belonged to the Government?

A. I heard it talked, but I didn't believe it.

Q. Who did you hear talk about it?

A. The neighbors.

Q. It was general talk throughout the neighborhood?

A. Yes.

Q. George Lent claimed to own this land before you bought it? 1263

A. Well, yes.

Q. He claimed that it was Government land, and that the railroad company didn't have any right to it; you understood,

422 didn't you, before you bought it that George Lent claimed it; that the land company and the railroad company didn't own the land, but that it belonged to the United States?

A. There was talk of that kind.

Q. Didn't George Lent claim that?
1264 A. Yes, he claimed that, and took a claim on the land.
Q. When you bought it George Lent claimed that it was Government land subject to his filing or entry?
A. When I bought it George Lent didn't think that the United States owned it, and tried to buy it of the land company.
Q. George Lent was living on part of the land?
A. Not on what I got.
Q. Part of your land?
A. No.
1265 Q. Didn't he claim something in 35?
A. No; not sure.
Q. How did you happen to buy it from the land company? Did some agent come to see you?
A. Mr. Brown.
Q. You were living on it?
A. No, but working it.
Q. And he told you that it belonged to the land company?
A. Yes.
1266 Q. Did you ever have any talk with Mr. Lind about this land?
A. No, sir.
Q. Did you ever have any talk with Mr. Somerville about it?
A. Yes, sir.
423 Q. Didn't Mr. Somerville say that it belonged to the Government?
A. Yes.
Q. That was before you bought it?
A. Yes, sir.
Q. Before you bought it?
1267 A. Yes.
Q. Mr. Somerville is a lawyer here?
A. Yes.
Q. He told you that the land belonged to the United States?
A. Yes, sir. He said he thought so.

Mr. LAMBERTON:

Q. When you purchased this land you thought, and George Lent and everybody thought, that it belonged to the land company?
A. Yes.
1268 Q. When you purchased this land George Lent didn't claim to have any right to this land; he tried to buy it of the land company?
A. Not that forty what I got; but in the same section.
Q. Now, George Lent never lived on any of this land?
A. No.
Q. Now, this talk that you spoke of—what was that? A general rumor that the railroad company had got too much land; some-
1269 thing in the newspapers about it?
A. Yes, that was it.
Q. They didn't mention this particular piece of land?
A. No.
424 Q. There was nothing said about the land company land?
A. No.

Q. This was the substance: That the railroad company had got too much land—just a general rumor in the neighborhood?
A. Yes.
Q. Now, when you talked with Somerville, he wanted you to pay him some money in order that he might contest the claim?
A. Yes.
Q. He never looked it up for you, did he?
A. No.
Q. Never examined any records?
A. Why, no.
Q. And he just told *told* you of this general rumor?
A. He said he think so; couldn't tell for sure.

Mr. EVANS:

Q. You signed a paper for Mr. Somerville to send to Washington?
A. Yes.
Q. In that paper it is said the land belonged to the United States?
A. I don't know.

Mr. LAMBERTON:

Q. What was in it?
A. I don't know.
Q. Do you remember that you signed it, for sure?
A. Yes; I signed it.
Q. You didn't know what it was?
A. No, I didn't.

425 Mr. EVANS:

Q. When you signed that paper it was in your mind to get the land from the United States?
A. Yes.
Q. You were willing to try it?
A. Yes.
Q. You wanted the United States to bring a suit against the railroad company and land company to try to get the title to these lands?
A. Yes.
Q. That was what the paper said?
A. Yes.
Q. You understood that?
A. Yes.

Mr. LAMBERTON:

Q. You didn't know what that paper said?
A. No.
Q. You was willing to take your chances of getting that land as long as it didn't cost you anything?
A. Yes.
Q. You didn't think you could get the land from anyone but the land company, did you?
A. No.

Q. You didn't think you could get the land from anybody but the land company, and nobody else?

A. No.

1275 Q. You didn't believe that the Government had any right to the land, did you?

A. Yes; I thought everybody was trying it, and I thought that I would try it too—trying to get railroad lands.

426 Q. That rumor that you heard was that all the railroad land belonged to the Government, or was going back to the Government?

A. Yes.

1276 Mr. Remiger is excused and Witness BLASIUUS HAALA sworn.

Mr. LAMBERTON:

Q. What is your name?

A. Blasiuus Haala.

Q. How old are you?

A. Thirty-nine years.

Q. Are you a married man?

A. Yes.

Q. Got a family?

1277 A. Yes; six children.

Q. You are a citizen of the United States?

A. Yes.

Q. You are one of the defendants in this action of the United States against the Winona & St. Peter Railroad Company and others?

A. Yes, sir.

Q. Give a description of the land owned by you, or contracted for by you, which is involved in this suit.

1278 A. It is the SW. ¼ of the NE. ¼ S. 3, T. 108, R. 32.

Q. How many acres?

A. Eighty acres; no, forty acres.

Q. Who did you purchase it from?

A. The Winona & St. Peter Land Company.

427 Q. When did you purchase it?

A. In October, '89.

Q. How much did you pay for it?

A. $10.00 an acre.

Q. You got a contract for this land?

1279 A. Yes.

Q. How much have you paid on it, do you know?

A. About $300.00.

Q. You have signed an obligation to pay the balance?

A. Yes.

Q. You intend to pay it?

A. Yes; sure.

Q. When you purchased this land you purchased it in good faith, believing that you were getting an absolute title in fee simple thereto?

1280 A. Yes; sure.

Q. When you purchased this land did you have any knowledge that the United States claimed this land or claimed to have any interest in it?

A. No.

Q. Did you have any knowledge that anyone or any corporation disputed the title of the land company to this land?

A. No.

Q. It was generally known at the time that you purchased this land that it belonged to the land company? 1281

A. Yes.

Q. Have you cultivated and occupied this land ever since you purchased it?

A. Yes; eight or nine years.

428 Q. What kind of improvements have you on the land?

A. Half plowed and half pasture.

Q. Is the pasture in tame grass?

A. No.

Q. The land fenced? 1282

A. About twenty acres fenced in.

Q. How much are your improvements worth?

A. A little more than $100.00.

Q. When did you commence to cultivate this land?

A. Eight or nine years back.

Q. When you commenced to cultivate this land it was not in the market, was it?

A. No.

Q. The land company didn't want to sell it then?

A. No.

Q. As soon as it came into market you purchased it, didn't you, 1283 of the land company?

A. Yes.

Q. As soon as the land company offered it for sale you purchased it of them?

A. Yes.

Q. How long have you paid the taxes on this land?

A. Four years.

Q. About how much have you paid for taxes?

A. About $16.00 or $17.00 altogether.

Q. You have paid all the taxes due on the land? 1284

A. Yes.

Q. What do you consider this land, together with the improvements, worth?

A. About $500 or $600.

429 Mr. EVANS:

Q. How long have you lived out there—out in that neighborhood?

A. About ten or eleven years.

Q. You heard this talk out there about the Government owning 1285 the land?

A. No.

Q. You never heard it?

A. No.
Q. You know George Lent?
A. Yes.
Q. Did George Lent claim this forty?
A. No.
Q. You never heard any talk, you say, about who owned the land?
1286 A. No; except through Mr. Brown, that it belonged to the land co.

Mr. LAMBERTON:

Q. It was generally known that it belonged to the land company?
A. Yes, sure; every man said that it belonged to the land company.
1287 Q. And you believed that it did belong to the land company?
A. Yes.
Q. And you had no reason to believe that it belonged to anybody else?
A. No.

430 Mr. Plasiuus Haala is excused, and Witness ANTON FISHER sworn.

Mr. LAMBERTON:

Q. What is your name?
1288 A. Anton Fisher.
Q. How old are you?
A. Thirty years old.
Q. Are you a married man?
A. Yes.
Q. Have you a family?
A. Yes, sir.
Q. Are you a citizen of the United States?
A. Yes.
Q. Are you one of the defendants in this suit of the United States against the Winona & St. Peter Railroad Company and others?
1289 A. Yes, sir.
Q. Give a description of the land owned by you, or contracted for by you, which is involved in this suit?
A. It is the S. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, S. 5, T. 108, R. 33.
Q. Who did you buy this land from?
A. From Amel Altermatt.
Q. How much did you pay for it?
A. I paid $1,100.
Q. Did Mr. Altermatt previously buy it from the Winona & St. Peter Land Company?
A. I couldn't tell you that.
1290 Q. Didn't Mr. Altermatt, at the time that you purchased this land from him, assign to you a contract?
A. Yes.

Q. He turned over his contract to you for the land?
A. Yes.
431 Q. That contract was a contract from the land company—a contract between the land company and Mr. Altermatt?
A. I guess so.
Q. How much is there due the land company for it. How much do you owe the land company for it—anything? 1291
A. I can't tell, exactly.
Q. How much have you paid?
A. I have paid $500.00.
Q. You have signed an agreement to pay the balance, and you intend to pay it?
A. Yes, sir.
Q. And when you pay for the land, you shall have a deed for it?
A. I suppose so.
Q. When you purchased this land, did you have any knowledge that the United States claimed the land, or claimed to have any 1292 interest in it?
A. Not at the time I bought it.
Q. Did you have any knowledge that anyone or any corporation disputed the title of the land company to the land?
A. No.
Q. The first you knew about any dispute about the title to the land was when this suit was commenced?
A. Yes.
Q. It was generally known there that this land belonged to the land company, was it not? Everybody knew that it belonged to 1293 the land company?
A. At that time I bought it.
Q. How long have you occupied this land?
A. I broke it last year for the first time.
432 Q. How many acres?
A. About fifty-five or sixty acres.
Q. How many acres broken when you purchased it?
A. I couldn't tell.
Q. How many now?
A. About fifty-five or six—not sixty. 1294
Q. What kind of improvements have you got on this land?
A. That is all I got.
Q. Haven't you got it fenced?
A. No.
Q. What do you consider your improvements worth?
A. Couldn't tell.
Q. Well, about what?
A. The breaking is worth about $2.80 an acre; well, say, about $200.00. 1295
Q. Do you know when Altermatt purchased the land from the co.?
A. I couldn't tell.
Q. How long have you paid the taxes?
A. Two years.

Q. How much taxes?
A. I guess about $18.00 altogether.
Q. All the taxes are paid that are due on the land?
A. Yes, sir.
1296 Q. What do you consider the land and improvements worth?
A. I couldn't tell that.
Q. Well, what do you think?
A. I wouldn't sell it.
433 Q. You wouldn't sell it—you want to live there—you want to keep it as a part of the home farm?
A. I want to keep it, but I live about half a mile away.
Q. But it is a part of your home farm?
1297 A. Yes.

Mr. EVANS:

Q. You live about half a mile away?
A. Yes, sir.
Q. What is your full name?
A. Anton Fisher.
Q. Now, did you hear awhile ago that the United States claimed to own this land?
A. Yes, sir; I had heard it.
Q. Did you hear it before you bought it?
1298 A. Yes; before.
Q. You bought the land since this suit commenced?
A. Yes, sir.
Q. You bought this land from Altermatt since this suit began?
A. Yes, sir.
Q. When did you buy it?
A. I bought it last June a year ago, or—here's the contract.
Q. [Examining contract.] You bought this land from Mr. Alter-
1299 matt on the 4th day of June, 1892, just as it says here?
A. Yes.
Q. You heard about this suit when it was brought?
A. Yes, sir.
434 Q. You had a claim to the SW. ¼ of 5–108–32, didn't you?
A. Yes.
Q. You claimed that from the United States, didn't you? You
1300 tried to get it from the Government—signed a paper that went down to Washington—and you had a shanty on it?
A. Yes, sir.
Q. Who got it for you? Who was your lawyer?
A. Mr. Somerville.
Q. You and a good many of your neighbors went to Mr. Somerville about this matter in '87—four or five or six years ago?
A. Yes, sir; about seven.
Q. He told you, didn't he, that this land belonged to the United States?
1301 A. He thought so.
Q. And you filed on it, or tried to?
A. That other eighty; not this one I now got.

Q. The SW. $\frac{1}{4}$?
A. Yes, sir.
Q. And a good many of your neighbors went to Mr. Somerville?
A. Yes, sir.
Q. You was told by him, as you said, that he thought this was United States land?
A. The one I filed on.
Q. Do you know who else signed that paper with you? 1302
A. I couldn't tell very sure; maybe Joe Fisher, my brother——
Q. That was Anton J. Fisher?
A. Yes.
435 Q. You knew that?
A. Yes.
Q. This paper that you signed there for Mr. Somerville was to be sent down to Washington?
A. I couldn't tell.
Q. You signed it so it could be sent down to Washington? 1303
A. Yes.

Mr. LAMBERTON:

Q. When you bought this land you didn't know that the Government had brought any suit?
A. No; I never thought so.
Q. No papers had been served upon you?
A. No; I heard afterwards.
Q. The Government never served any papers upon you at all? 1304
A. No.
Q. And when you bought the land you didn't know that it was involved in any suit?
A. No.
Q. You never tried to get this land from the Government?
A. No.
Q. Just explain how you happened to go to Mr. Somerville about this; did Somerville send you a notice?
A. No; not me. All the rest was going there and I thought I would go, too.
Q. What made the others go to see Mr. Somerville? 1305
A. I don't know particularly; but all the rest thought they ought to have Mr. Somerville for an advisor, and I went with them.
436 Q. Do you know if Mr. Somerville sent out any requests for them to go in?
A. Not that I know.
Q. When you bought this land of Altermatt you thought you were getting a good title to it?
A. When I bought it; yes. 1306

Mr. EVANS:

Q. You haven't got a deed, have you?
A. No.
Q. Is John Fisher your brother?
A. No; Joe Fisher is my brother.
Q. And he was trying to get this land from the Government?

A. Not Joe, but Anton J.
1307 Q. You knew that he was trying to get it?
A. He said so.
Q. He knew that it was Government land?
A. He said so.
Q. That was six or seven years ago?
A. I guess it must be.

Mr. LAMBERTON:

Q. He said he thought it was Government land—just a rumor
1308 that some of the land was Government land?
A. Yes.
Q. Do you know what was in that paper, that paper that you signed to go down to Washington?
A. No; not yet any more.

437 Mr. Fisher is excused and Witness MICHAEL SCHROEPFER sworn.

Mr. LAMBERTON:

Q. What is your name?
1309 A. Michael Schroepfer.
Q. How old are you?
A. Fifty-three years old.
Q. You are a married man?
A. Yes, sir.
Q. Have you got a family?
A. Plenty.
Q. You are a citizen of the United States?
A. Yes.
Q. Give a description of the land owned or contracted for by you which is involved in this suit.
1310 A. The undivided half of the NW. ¼ S. 1, T. 108, R. 32.
Q. When did you purchase this land, and from whom?
A. Of the Winona & St. Peter Land Company in 1886.
Q. How much did you pay for it?
A. $8.50 per acre.
Q. You paid for this land and got a deed?
A. Yes.
Q. There is no incumbrance on this land?
1311 A. No.
Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
A. Yes.
438 Q. When you purchased this land did you have any knowledge that the United States claimed this land, or claimed to have any interest in it?
A. No. Just as soon as it came out that it was railroad land I
1312 bought it—when it came into market. And I didn't hear that the Government had any claim in the land.
Q. Did you know that anybody or any company disputed the right of the land company to it?

A. I never heard anything about it, only there was a rumor that by going to Tracy and paying $1.00 you could get a piece of land; that you could file a homestead for $1.00.

Q. Did you file a homestead?

A. Yes; I went up there and filed on a claim, and then I went home with it; and I had some payments already made on it to the company, and so I write down to the governor for advice, and the 1313
governor write back that I keep up my payments as I had done before, and that I should not think that the land was coming back to the Government; and that I should keep up my payments the same as usual, and be satisfied and not worry about it; that the land belonged to the land company, and I could keep my homestead papers.

Q. Who was the governor then?

A. I couldn't tell now who it was; it must be six or seven years ago.

Q. Did you keep up your payments and pay for the land in full? 1314

A. Yes.

Q. And got a deed?

A. Yes, sir.

439 Q. Was the reason of your going to Tracy because of the rumor that all the railroad lands were going back to the Government?

A. Yes; I go to Tracy because I hear that all the railroad lands was going back to the Government.

Q. This land was not mentioned in particular?

A. All the land. 1315

Q. How long have you occupied and cultivated this land?

A. Twelve or thirteen years.

Q. Then you occupied the land before you purchased it?

A. Yes; I broke four acres before I bought.

Q. As soon as it came into the market did you buy it?

A. Yes, sir; as soon as it came into the market I purchased it.

Q. What kind of improvements have you on the land? 1316

A. One hundred and thirty or one hundred and thirty-five acres under cultivation.

Q. What else?

A. The other is in tame hay.

Q. What other improvements have you?

A. House, barn, and granary, and everything what is necessary for a farmer to have.

Q. What is the value of the improvements, buildings, and breaking, and everything?

A. About $1,700 or $1,800. 1317

Q. Have you bought the other undivided half of this land?

A. Yes, sir; from the Minnesota Land & Investment Company.

440 Q. Have you a deed to all this land?

A. No; I got a deed from the land company for the eighty I got from them; and I got a contract from the Minnesota Land & Investment Company for the other half, and three more payments to make.

1318 Q. How long have you paid the taxes on this land?
A. From the beginning until now.
Q. How much taxes have you paid?
A. From $18 to $22 a year.
Q. And all the taxes are paid now up to date?
A. Yes.
Q. What is the land and improvements worth?
A. $4,500.00.
Q. How much is the eighty worth?
A. $21.00 an acre without the improvements.
Q. And your buildings are on this one eighty?
1319 A. Yes.

Mr. EVANS:

Q. What is your full name—R. Michael?
A. Michael Schroepfer?
Q. Do you know Mr. Somerville?
A. Yes.
Q. You know him don't you—the lawyer?
A. Yes.
Q. Do you recollect going to Mr. Somerville about this land once?
A. Never.
1320 Q. Did you never see him about it?
A. No.
Q. Didn't you ever have any talk with Mr. Somerville about this land?
A. No.
441 Q. Didn't you sign a paper for Mr. Somerville?
A. No.
Q. Did you hear any talk about this land being the Government land—this eighty acres?
A. No; didn't hear anything about it.
Q. Do you recollect coming to see Mr. Somerville with some of
1321 your neighbors about this land in '86 or '87?
A. No; I don't remember it.
Q. Didn't you sign a paper which was to be sent down to Washington?
A. No.
Q. How long have you known Mr. Somerville?
A. About five or six years.
Q. Now, didn't you ever have a talk with Mr. Somerville about this land?
A. No; never.
1322 Mr. Schroepfer is excused.
Adjourned until 1.30 p. m.

Examination continued 1.45 p. m.

THEODORE WEBBER sworn.

Mr. LAMBERTON:

Q. What is your name?
1323 A. Theodore Webber.

Q. How old are you?
A. Thirty years old.
Q. Are you a married man?
A. Yes, sir.
442 Q. Have you a family?
A. Had one child, but it died.
Q. You are a citizen of the United States?
A. Yes.
Q. You are one of the defendants in this suit of the United States against the Winona & St. Peter Railroad Company and 1324
others?
A. Yes.
Q. Give a description of the land owned by you, or contracted for by you, which is involved in this suit.
A. It is the W. ½ of the NE. ¼ S. 21, T. 109, R. 33.
Q. Who did you purchase this land of?
A. Of Julius Webber.
Q. Did he buy it of the W. & St. P. Land Company?
A. Yes.
Q. When did you buy it? 1325
A. In '89.
Q. When did your father buy it of the land company?
A. In '92.
Q. How much did you pay for the land?
A. $800.00.
Q. Have you got a deed of it?
A. Yes; I got a deed from the W. & St. P. Land Company.
Q. When you purchased this land you bought it in good faith, believing that you were getting a good title in fee simple thereto? 1326
A. That is what I thought when I was getting it.
Q. Is there any mortgage on this land?
A. Yes; a mortgage for $300.
443 Q. Who holds the mortgage?
A. Margaret Bertrand.
Q. When you purchased this land did you have any knowledge that the United States claimed to own it, or claimed any interest in it?
A. No; only what I heard. 1327
Q. You didn't know that the Government claimed any interest in it?
A. No; I didn't know anything about it.
Q. Did you know that anybody claimed to own it but the Winona & St. Peter Land Company?
A. About fifteen years ago there was a house on the eighty.
Q. At the time you purchased this land, or shortly prior thereto, did you have anybody examine the records to see who owned the land?
A. No. 1328
Q. Did your father?
A. No.
Q. You knew it belonged to the land company?
A. Yes; but when I got the land I did ask if it was good—the title—and they said, yes, it was.

Q. Do you live on this land?
A. Yes.
Q. And you are cultivating it?
A. Yes.
1329 Q. How long have you occupied this land and cultivated it?
A. Four years, excepting what father worked on it.
Q. What improvements have you on the land—buildings, fencing, breaking, etc.?
444 A. A house, 16 by 24; a barn, 16 by 30; a granary, 12 by 30; a chicken stable, 10 by 16; a hog stable, 10 by 14, and cornerib—I don't know how big—10 acres in pasture, with a good fence; one and one-half acres trees in good growing condition.
1330 Q. You set out the trees?
A. Yes.
Q. How many acres have you broke?
A. About 75 or 76 acres.
Q. How long have you had that under cultivation?
A. We broke on it in '82.
Q. How many acres that year?
A. About fifteen acres the first year.
Q. How many the next year?
A. The next year about fifteen acres more.
Q. How much the next year?
1331 A. I think it was about ten acres.
Q. How much the next year?
A. Well, I think that we broke about ten acres more, making about fifty acres in all.
Q. How much the next year?
A. No more until I got it: I got it in '89.
Q. How many acres did you break?
A. The first year about 2.
Q. The next year about how much?
A. Not anything.
Q. The next year how much?
1332 A. All the rest; enough to make 75.
Q. How long have you paid the taxes on this land?
A. The taxes I paid for eleven years, my father or I.
Q. How much have you paid as taxes?
445 A. This year $10.00; it was not so high before—about $6.00 and $7.00 a year and up to $8.00. Between $6.00 and $10.00 a year for eleven years.
Q. All the taxes are now paid on the land?
A. Yes; they are.
1333 Q. What are your improvements worth, counting fencing, breaking, and buildings, and trees, and everything?
A. Well, the buildings cost about $700.00; the fences about $25; the breaking $3.00 an acre—$225 for breaking.
Q. And the trees are worth how much now?
A. They ought to be worth at least $100.00—a nice grove in good growing condition.
Q. Your improvements amount to about between $1,100 and $1,200?

A. I didn't figure it up; yes, I guess so. 1334

Q. What do you consider this land, together with the improvements, worth?

A. It ought to be worth—why, I was offered $30.00 an acre for it.

Q. You wouldn't sell it for that—$30.00 an acre?

A. We call it worth about that.

Q. That is your home, is it—that is what you call your home farm?

A. Yes; that is my home.

Mr. Evans: 1335

Q. Who is Julius Webber?

A. That is my father.

Q. When did you buy this from him?

A. In '89.

446 Q. You have got a deed?

A. Yes; he turned it over to me.

Q. How long have you lived in that neighborhood, Mr. Webber?

A. About twenty-eight years.

Q. You moved into this State when? 1336

A. It was about twenty-eight years ago.

Q. You have heard this talk about who owned this land, haven't you? Before you bought it?

A. The land company.

Q. You heard that the land company owned it? Did you ever hear that the Government owned it?

A. Well, they was talking about it.

Q. Well, who was talking about it?

A. We never believed in it.

Q. Don't you know that your father took some steps at that time to try to enter this land and get a Government title to it? 1337

A. I guess father did file on it.

Q. Do you recollect about his coming to see Mr. Somerville about sending some papers down to Washington? Did you ever hear him say anything about it?

A. I don't know anything about it; I know when he filed on it it was all quiet.

Q. Don't you recollect about his coming to see Mr. Somerville?

A. Yes.

Q. That was common talk around through the neighborhood— 1338 there was a good deal of talk about it?

A. Why, yes; there was talk all over about that.

Q. And that was before you bought that land of your father?

A. Yes; that was before I got it.

447 Q. The talk was to the effect that the Government still owned the land?

A. Yes, that was what Mr. Somerville always said, that they could get it by filing on it.

Q. That it belonged to the United States?

A. Yes, that was what Mr. Somerville said. 1339

Mr. LAMBERTON:

Q. Do you know that your father ever came in to see Somerville?

Q. Who is the man Somerville?

A. A lawyer.

Q. Did he write to your father to come in and see him?

A. I guess John Hovers gave him the notice.

Q. He told him to come in to see Somerville?

1340 A. Yes; he said they were all going in to see Mr. Somerville.

Q. Did John Hovers tell your father that Mr. Somerville said to come in?

A. I can't tell that.

Q. You don't know of your own knowledge what Mr. Somerville said?

A. I just heard them say.

Q. You never consulted with Mr. Somerville?

A. No.

Q. Now, Mr. Somerville wanted you to pay him money in order

1341 for him to contest this for you?

A. Why, yes; father did pay him $3.00 at that time. Last fall, I think it was, he wanted $25.00 from me, and I told him I was not going to pay him anything.

448 Q. Mr. Somerville kind of made it a business to get you fellows to pay him money to contest these claims?

A. Yes.

Q. Now, about this talk that you heard—the talk was this,

1342 wasn't it? That the railroad company had got too much land, and that some of it was going back to the Government?

A. I just heard that the land was going back to the Government.

Q. All the land?

A. Certain pieces.

Q. What pieces?

A. I couldn't tell. He had mine on his list.

Q. He wanted you to pay him $25.00, did he?

A. Yes.

Q. When did he show you this list?

1343 A. Last fall, I think it was.

Q. After you bought the land?

A. Just before I was ordered to go to Mankato.

Q. You hadn't heard anything before you bought the land?

A. I had heard of it.

Q. You didn't see Mr. Somerville before you bought the land?

A. No.

Q. What did you hear before you bought the land?

1344 A. I heard that the land should go back to the Government.

Q. Any particular piece, or just about railroad lands?

A. Only just such land as had filings on.

449 Q. It was just neighborhood talk?

A. Nobody told it that pretended to know; just neighborhood talk.

Q. When you bought the land from your father you thought that you were getting a good title to it?

A. Why, yes. 1345
Q. You think that you have got a good title?
A. I haven't looked the records over, but I do believe it.
Q. You believe that you have got a good title now?
A. Well, not sure till I look the records over.
Q. If the records here in the county show you have got a good title, you would believe it?
A. Why, yes.
Q. Was there ever any summons served on you to go down to Mankato?
A. Yes; there was to me and to father, both. The name was 1346 wrong; it was John Webber instead of Julius.
Q. There never was any summons served on you by your right name?
A. No.
Q. You never was served with any command to go down to Mankato, with the right name?
A. No.
Q. Did you go down to Mankato?
A. No; I was on the way, but they said it was no good to go. 1347
Q. Who was the man that served the summons?
A. I was not at home. I don't know.
Q. Did he leave word for you to come and see Mr. Somerville or Mr. Lind?
450 A. Yes; he said to see Somerville or Lind.
Q. They are both lawyers?
A. Yes, sir.
Q. And that was what they wanted you to pay the $25 for?
A. Yes; but I wouldn't pay it. 1348

Witness MICHAEL STRUM is sworn:

Mr. LAMBERTON:

Q. What is your name?
A. Michael Sturm.
Q. How old are you?
A. Fifty-eight years old.
Q. Are you a married man?
A. Yes, sir. 1349
Q. Have you a family?
A. Eleven children.
Q. Are you one of the defendants in this action of the United States against the W. & St. Peter Railroad Company and others?
A. Yes, sir.
Q. Give a description of the land owned by you, or contracted for by you, which is involved in this suit.
A. It is the NW. ¼ of the SE. ¼ and lot No. 3 in S. 31, T. 109, 1350 R. 33.
Q. You are a citizen of the United States?
A. Yes.
Q. Who did you purchase this land from?
A. From the W. & St. P. Land Company.

451 Q. When did you purchase it?
A. March 30th, 1880.
Q. What was the price?
A. $10.00 an acre.
Q. Have you got a deed or contract?
1351 A. A contract.
Q. How much have you paid on the land now?
A. Over $600.
Q. Did you sign an obligation to pay the balance?
A. Yes.
Q. And you intend to pay the balance?
A. Yes.
Q. When you purchased this land, did you buy it in good faith, believing that you were getting an absolute title in fee simple?
A. Yes; sure.
Q. When you bought this land, did you have any knowledge
1352 that the United States claimed to own the land, or claimed to have any interest in the land?
A. No; when I bought it there was a talk about it, but I always thought it was nothing but railroad land.
Q. Did you have any knowledge that any one disputed the land company's title to it?
A. No.
Q. This land was known out there as belonging to the land company, was it not?
A. I was to see Mr. Somerville, and Somerville said it belonged to the St. Paul & Sioux City Railroad Company, and then I met
1353 Mr. Brown and learned that it belonged to the land company.
Q. Mr. Somerville didn't say that the Government had any interest in it?
A. No.
452 Q. Mr. Somerville is a lawyer here?
A. Yes; he is a lawyer.
Q. You had Mr. Somerville examine the records to see who the land belonged to, didn't you?
A. Yes; Somerville said that he would go down to St. Paul to
1354 look it up in the United States land office.
Q. When was this?
A. In 1889.
Q. That was before you purchased the land?
A. Yes; about two years before.
Q. And after you found out that the land belonged to the land company, you purchased it?
A. Yes, sir.
Q. Do you live on this land, you and your family?
A. No.
Q. Do you cultivate this land?
1355 A. Yes.
Q. Does it join yours?
A. Yes; it joins it.
Q. It is a part of the home farm, is it not?

A. Yes; close to it.
Q. That is where you intend to make your home?
A. Yes; that is where I intend to make my home.
Q. And is it your home now?
A. Yes; my home now.
Q. What improvements have you on that land?
A. Fences, that is all; it is all broke up, and some trees; except five or six acres, it is all broken.
Q. How many acres have you there? 1356
A. Forty acres and the lot.
Q. How many acres have you got in trees?
A. Three or four.
Q. How many acres fenced in?
453 A. About fifteen acres fenced.
Q. About how much are your improvements worth?
A. About $400.
Q. When did you commence to cultivate this land?
A. In 1891.
Q. You are cultivating it now? 1357
A. Yes.
Q. How long have you paid the taxes on this land?
A. 3 years.
Q. How much have you paid for taxes on the land?
A. About $12.00 a year.
Q. All the taxes are paid on the land now?
A. Yes.
Q. How much do you consider this land, together with the improvements, worth?
A. I wouldn't sell it for $18.00 an acre, including the improve- 1358
ments.
Q. Were there any papers served on you in this suit—any summons to go to Mankato?
A. Yes.
Q. Who served them?
A. I think the United States marshal.
Q. Did he tell you to come in and see Mr. Somerville?
A. Yes.
Q. Did Mr. Somerville want to charge you something? 1359
A. Yes, but he didn't say how much, and I gave him $10.00.
Q. Have you paid him any more?
A. No.
454 Q. Did he ask you for any more?
A. Yes, this spring he write a letter and say the suit was coming off again this spring and I must pay him some more money.
Q. Did you pay him any more?
A. No. 1360

Mr. EVANS:

Q. You heard a good deal of talk about this land before you bought it?

A. Never heard anything about this land; heard of others, but not this particular piece.

Q. You did hear that the United States claimed to own a good deal of the land out in that community that had been certified and deeded to the railroad company?

A. Yes, I had heard that there was a good deal of talk about
1361 this land, but about this certain piece I have been asking for the last ten years, and could never hear anything about it.

Q. But you heard of other land?

A. Yes.

Q. When you spoke of Mr. Brown telling you that it belonged to the land company, you had refererence to Mr. Wilson Brown, agent of the land company?

A. Yes, that is who I meant.

Q. What that Mr. Somerville had to do with this land was to look after your interest in this suit?

1362 A. Yes, the second time, but not the first time.

Q. The first time you saw him he told you that it belonged to The St. Paul & Sioux City Railroad Company?

A. Yes.

455 Q. You haven't got a deed yet from the land company?

A. No.

Q. Has anyone else ever lived on this land besides yourself?

1363 A. No, not anybody; there never was a furrow broke.

Q. Did you do any breaking on the land before you bought it from the land company?

A. About five or six acres.

Q. Did you ever try to file on this land as Government land?

A. No.

Mr. LAMBERTON:

Q. Did you ever hear of anybody claiming this land but yourself and the land company?

1364 A. No.

Q. And you never claimed the land until you purchased it from the land company?

A. No, sir.

Mr. Sturm is excused and Witness FRANK AUGUSTIN sworn.

Q. What is your name?

A. Frank Augustin.

Q. How old are you?

1365 A. Forty.

Q. Are you a married man?

A. Yes, sir.

Q. Have you got a family?

A. Yes, sir.

456 Q. You are a citizen of the United States?

A. Yes, sir; I guess I am, as long as I was born in this country and can vote.

Q. You are one of the defendants in this suit?

A. Yes, sir.

Q. Give a description of the land owned by you or contracted 1366
by you which is involved in this suit.
A. It is the NW. ¼ of S. 29, T. 109, R. 33.
Q. One hundred and sixty acres?
A. Yes, sir.
Q. When did you purchase this land?
A. In December, '91.
Q. From whom did you purchase it?
A. The W. & St. P. Land Co.
Q. Did you get a deed for it?
A. No; a contract.
Q. How much did you pay for the land?
A. $10.00 an acre. 1367
Q. How much have you paid now?
A. About $600.
Q. You have signed an obligation to pay the balance?
A. Yes, sir.
Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
A. Yes, sir; I did.
Q. When you purchased the land, did you have any knowledge 1368
that the United States claimed the land or claimed to have any title to it?
A. Yes; but I didn't have any faith in it.
Q. Just heard of it?
A. Yes.
457 Q. And you didn't believe the rumor?
A. No.
Q. You didn't hear it from anyone that pretended to know?
A. No, sir; it was just talk.
Q. Did you have any knowledge that anyone disputed the right 1369
of the land company to it?
A. Only Mr. Somerville; I knew that he was fighting all this time.
Q. You thought he did this to get business for himself?
A. That was it.
Q. This rumor that you heard, what was it anyway?
A. The fellows came in here—the neighbors told them to come in here and file on the land and get it for a homestead. And they told me to come, too, but I wouldn't do it; I didn't believe in it. 1370
Q. No one said that this particular piece was Government land?
A. No, sir.
Q. All the railroad land was going back to the Government?
A. Well, no; just a piece here and there.
Q. Did they tell you that this particular piece was?
A. Well, no; they didn't just tell me so, but some fellows tried to file on this piece of land; I don't know whether they did or not.
Q. Do you live on this land? 1371
A. No, sir.
Q. You cultivate it.
A. Yes, sir.

Q. How long have you cultivated it?

458 A. Some of it for the last two years, and I have got the most of it broken up.

Q. That is your home farm?

A. Part of the home farm.

Q. How many acres under cultivation?

1372 A. There must be in the neighborhood of 120.

Q. How long has that been under cultivation?

A. About——

Q. What improvements have you put upon this land?

A. That is all the improvements; just the breaking, not any fencing.

Q. How much is your improvements worth?

A. They ought to be worth about $250 or $275.

Q. When did you say you commenced to cultivate this land?

1373 A. I commenced to cultivate the first of it last year. There was nothing broke when I begun it; had to open it up first.

Q. Have you got it all plowed up now ready for next spring's crop?

A. Yes, sir.

Q. What is the value of that plowing for next year?

A. If I should go off, I wouldn't take $4.00 an acre.

Q. You have plowed it and taken care of it well?

A. Yes; I have done it with the intention of keeping it for my home.

Q. How long have you paid the taxes on the land?

1374 A. 2 years.

Q. How much?

A. I have paid somewheres about $44 or $45.

Q. What do you consider this land worth, together with the improvements?

459 A. I think it would be worth about $18 an acre.

Mr. EVANS:

Q. You knew when you bought this land that there was a claim that it belonged to the United States?

1375 A. Of course they claimed that; they had filed on it before I bought it.

Q. And you knew that it was talked that it might go back to the Government; you bought it with knowledge of these facts?

A. Yes.

Q. Do you know Peter Peterson?

A. Yes, sir.

Q. He claimed to have filed on it?

A. Yes, sir.

Q. Was he in possession of it when you bought it?

A. They claimed that he was.

1376 Q. Was he on the land?

A. There was no one on the land.

Q. Did you ever see him there?

A. No, sir; not as I remember.

Q. You knew that he claimed that it was Government land?

A. Yes.
Q. And still you went and bought it from the land company?
A. Yes.

Mr. LAMBERTON: 1377

Q. Did anyone ever live on that land?
A. Not to my knowledge.
Q. Was it ever worked?
A. Only about 4, 5, or 6 acres.
460 Q. When did Peter Peterson claim to have filed on this land?
A. I couldn't just say whether it was in '84 or '85; Peterson had a little strip broke on it; he worked it about a year after he had another claim.
Q. It had not been worked again until after you bought it? 1378
A. No; not until last summer—or, no, until '90.
Q. And nobody ever lived on it?
A. Not so far as I know.
Q. Nobody made any improvements?
A. Except that little breaking.
Q. You have signed an obligation to pay the balance for this land?
A. Yes, sir.
Q. And as soon as you pay that you will get a deed?
A. I expect to. 1379
Q. And you intend to make that your home?
A. Yes, sir.
Q. Was there any summons served upon you to appear at Mankato?
A. Yes, sir.
Q. Who served it?
A. I don't know who it was.
Q. You were not at home?
A. No, he left it with my wife.
Q. He left word for you to see Mr. Somerville? 1380
A. Yes, sir; it was the U. S. marshal. And he wanted me to pay $10.00, and I wouldn't pay it for him; that was in Mr. Somerville's office, and he was so mad at me because I wouldn't pay it that he came near kicking me out of the office.
461 Q. He had others there that he wanted to pay him?
A. Yes; there were others, and some of them wouldn't pay it, either.
Q. He was making a business of getting these cases?
A. Yes, sir. 1381

Mr. Augustin is excused, and witness HENRY KAEHLER sworn.

Mr. LAMBERTON:

Q. What is your name?
A. Henry Kaehler.
Q. How old are you?
A. Fifty-three next Christmas.

Q. Are you a married man?
1382 A. Yes, sir.
Q. Have you a family?
A. Yes, sir.
Q. A citizen of the United States?
A. Yes, sir.
Q. Are you one of the defendants in this action?
A. Yes, sir; I had a summons last fall, but not a word this fall.
Q. Give a description of the land owned by you, or contracted for by you, which is involved in this suit.
1383 A. It is the NW. ¼ of the NW. ¼ S. 19, T. 109, R. 33, bought May 22, 1878, and the NE. ¼ of the NW. ¼ S. 19, T. 109, R. 33, bought June 20th, 1887.
Q. How many acres?
A. Eighty—or about seventy-six—a fractional quarter.
462 Q. When did you purchase it?
A. In '78 and '87.
Q. Who did you purchase it from?
A. The Winona & St. Peter Land Company.
Q. How much did you pay for it?
A. $10.00 for the first forty per acre and $9.00 an acre for the
1384 second forty.
Q. Have you got a deed for it?
A. For one forty for a long time.
Q. Have you got a deed for the second forty?
A. No.
Q. A contract?
A. Yes, sir.
Q. How much have you paid?
A. I got three payments more.
Q. Well, how much have you paid?
A. Oh, over $300.
1385 Q. The other forty is all paid for?
A. Yes.
Q. You have signed an obligation to pay the balance on the second forty?
A. Yes, sir.
Q. Did you purchase all this land in good faith, believing that you were purchasing an absolute title in fee simple thereto.
A. Yes.
Q. When you purchased this land, did you have any knowledge
1386 that the United States claimed to own the land, or claimed to have any interest in it?
A. No.
Q. Did you have any knowledge that anyone or any corporation disputed the title of the land company to it?
463 A. No; never.
Q. Did you ever have the records here examined to see who owned the land?
A. No; I didn't.
1387 Q. It was known that it belonged to the land company?

A. Yes; never heard or knew anything but that it belonged to the land company.

Q. It was known for a long time?

A. Yes; until last fall. I never knew anything until last fall that it belong to anybody else, or that anybody else had any claim to it but the railroad company until I and others was told to come to Mankato.

Q. How long have you occupied or cultivated this land?

A. All of it in pasture.

Q. How long have you used the first forty?

A. Since '78. 1388

Q. How long have you occupied the second forty?

A. Ever since the time I bought it.

Q. Are they fenced?

A. All fenced—both forties fenced.

Q. How much are the improvements worth?

A. About $500 worth of improvements on this land.

Q. Is this part of your home farm?

A. It is close to my door.

Q. You use it as part of your home farm? 1389

A. Yes, sir.

Q. How long have you paid the taxes on the first forty?

A. Since the first that I purchased it.

464 Q. How long on the second forty?

A. Ever since I bought it.

Q. The taxes are all paid up to date?

A. All are paid promptly.

Q. About how much have you paid in taxes?

A. From $3.00 to $6.00 on the first forty until I bought the 1390 second forty, and after that paid about $8 per year taxes.

Q. What do you consider this land worth, together with the improvements?

A. Why, I don't know; I wouldn't sell it, for it is right there, close; I wouldn't sell it.

Q. Well, how much is it worth?

A. About $20.00 an acre.

Q. Who served the summons on you last fall?

A. I don't know; the man he tell he was sent by the Government. 1391

Q. Did he tell you to come in and see Mr. Somerville or any other lawyer here?

A. I didn't know what to do, and he said I must look after a good lawyer.

Q. Didn't say who to come to?

A. No.

Q. Did you go down to Mankato?

A. Yes.

Q. What did you do down there?

A. Couldn't find anybody there in the court-house. A man took the paper from me. I got fooled out of $7.00 or $8.00, and had 1392 to stay all night on the train; had nothing to eat, and had to stay

all night on the train, and then there was not anybody to tell me anything down there. It was a little-boy trick.

Mr. EVANS:

Q. Did you hear any of this talk about the Government owning these lands out in that country?

A. No.

Q. You never heard any of that talk?

A. No.

Q. Do you know Divick Lawson—ever hear of such a man?

A. No.

Mr. LAMBERTON:

Q. Did anybody ever live on this land before you took it?

A. No.

Q. Never improved it, or anything?

A. No.

Mr. Kaehler is excused and Witness JOHN STELTZER sworn.

Mr. LAMBERTON:

Q. What is your name?

A. John Steltzer.

Q. How old are you?

A. Sixty years old.

Q. Are you a married man?

A. Yes.

Q. Have you got a family?

A. Yes, sir.

Q. A citizen of the U. S.?

A. Yes. sir.

Q. Are you one of the defendants in this action of the Government against the W. & St. P. R. R. Co. and others?

A. Yes.

Q. Give a description of the land and the number of acres owned by you, or contracted for you, which is involved in this suit.

A. I contracted with the Winona & St. Peter Land Company for the purchase of the N. ½ of the NW. ¼ of S. 27, T. 109, R. 32, Dec. 16th, 1889, eighty acres at $11.25 an acre; and also the interest of my brother, George Steltzer, in his contract with the W. & St. P. Land Company, the SW. ¼ of the NW. ¼, same section, town, and range.

Q. How much an acre did you pay for the forty purchased from your brother?

A. I didn't buy it by the acre, but at the rate of $17.

Q. Have you got a deed for this land?

A. No; a contract.

Q. How much did you pay on the contract for the first eighty from the land company?

A. About $410.00 on the eighty.

Q. Did you sign an obligation to pay the balance due on that eighty?

A. Yes, sir.

Q. The forty that you purchased from your brother, or your brother's son, that he had already purchased from the land company—how much did you pay on that piece of land? 1398

A. $1,400 for the 80.

Q. How much have you already paid?

A. $600 to my nephew.

467 Q. Have you signed an obligation to pay the balance due on that eighty you got from the land company?

A. Yes.

Q. Did you purchase all of this land in good faith, believing that you were getting an absolute title in fee simple thereto? 1399

A. I bought it this way, when it was paid for I would get my good title to it.

Q. When you purchased this land did you have any knowledge that the United States claimed this land, or claimed to have any interest in it?

A. No; never thought of it.

Q. Did you have any knowledge that anyone disputed the title of the land company to it?

A. No.

Q. This land was known out there for a long time as belonging to the land company? 1400

A. Yes.

Q. How long have you occupied or cultivated this land?

A. Ever since I bought it.

Q. What improvements have you put on it?

A. Broke about fifty acres on each eighty.

Q. About 100 acres under cultivation?

A. Yes.

Q. Have you got it all plowed ready for next spring's crop? 1401

A. Yes, all of it.

Q. How long have you paid the taxes on this land?

A. 3 years.

Q. How much have you paid in taxes?

468 A. Let me see—this year $19.00—about $35 altogether.

Q. Is this a part of your home farm?

A. Yes; all right there.

Q. What do you consider this land worth, together with the improvements?

A. I wouldn't sell it for $25 an acre. 1402

Q. You drained this land, did you?

A. Yes; and ditched it.

Q. How much did you spend in ditching it?

A. About $25.00 in ditching.

Mr. EVANS:

Q. Did you hear any of that talk about the Government claiming these lands, Mr. Steltzer?

A. No.

Q. You never did?

A. No; that it belonged to the land co. 1403

Q. Do you know Adam Schlegel?

A. No.
Q. Did anybody have this land before you got it?
A. No.

Mr. LAMBERTON:

Q. How long have you lived in this neighborhood?
A. About 5 years.
Q. Was there any summons served on you last fall?
A. No.
1404 Q. Was there any papers served on you by the Government in this suit?
A. No.
Q. Nothing was ever served on you?
A. No.

469 Mr. Steltzer is excused, and Witness CHARLIE FEIRER sworn.

Mr. LAMBERTON:

Q. What is your name?
A. Charlie Feirer.
1405 Q. How old are you?
A. Thirty-two.
Q. Are you a married man?
A. No.
Q. You are a citizen of the United States?
A. Yes, sir; I was born in this country.
Q. Are you one of the defendants in this action of the United States against The Winona & St. Peter Railroad Company and others?
A. Yes, sir.
Q. Give a description of the land owned by you, or contracted
1406 for by you, which is involved in this suit.
A. It is the W. ½ of the NE. ¼ S. 31, T. 109, R. 33; eighty acres; bought May 15th, 1890.
Q. From whom did you purchase this land?
A. From The Winona & St. Peter Land Company.
Q. Have you got a deed for it?
A. No; a contract.
Q. How much have you paid on it?
A. $755.
1407 Q. How much did you agree to pay for it?
A. $1,400.
Q. You signed an agreement to pay for the balance?
A. Yes.
470 Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
A. Yes.
1408 Q. When you purchased this land did you have any knowledge that the United States claimed to own the land or claimed to have any interest in it?

A. Not when I bought it.
Q. Did you have any knowledge of anyone claiming it?
A. No one.
Q. This land was known out there as belonging to the land company?
A. As long as I have known it.
Q. Everybody knew it?
A. Yes, sir.
Q. Do you live on this land? 1409
A. Yes.
Q. How long have you occupied and cultivated it?
A. Since '90.
Q. What is the nature of the improvements you have put on it?
A. I have broke it all up I can, and the rest is pasture; and fenced it, but no buildings.
Q. What is the value of the improvements?
A. The pasture cost me $150 for fencing.
Q. And what other improvements? 1410
A. What I broke up; about ninety acres broke and under the plow.
Q. How much is it worth to break it?
A. Oh, I don't know.
471 Q. What are the improvements worth altogether?
A. About $225.
Q. How much under cultivation?
A. Forty-five acres.
Q. Is it all plowed up ready for next spring's crop?
A. Yes, sir; already. 1411
Q. When did you first break it?
A. Part in '90 and '92 and '93.
Q. Is that where you intend to make your home?
A. That is going to be my home farm.
Q. How long have you paid the taxes on it?
A. Since 1890.
Q. How much have you paid?
A. Between $9.00 and $10.00 a year.
Q. What do you consider this land, together with the improvements, worth?
A. I wouldn't sell it less than $18.00 an acre. 1412
Q. You have farmed this carefully and well, have you?
A. Yes, sir.

Mr. EVANS:

Q. You say you never heard of any claim or any dispute about the title to this land?
A. No; I never heard before this suit was brought?

Mr. LAMBERTON:

Q. Was there ever any summons served on you?
A. Yes; last year. 1413
Q. Who served it?

A. I don't know. They told me to go to Somerville or Lind about it.

Q. Did you see Mr. Somerville?

472 A. Yes, and I paid him $10.00; I asked him if I must go down to Mankato, and he said he would look after it for me, and so I paid him $10 and he went down.

Q. Did he ever want any more money from you?

1414 A. No; never said anything more afterwards.

Mr. EVANS:

Q. You were told that Somerville and Lind were the best lawyers, and they were right when they said they were the best lawyers?

A. Yes, sir; the best lawyers to get the money.

Mr. Feiser is excused and Witness WOLFGANG PRANDL sworn.

Q. What is your name?

A. Wolfgang Prandl.

Q. How old are you?

1415 A. Forty-eight years old.

Q. Are you a married man?

A. Yes; sure.

Q. Have you a family?

A. Yes.

Q. Are you a citizen of the U. S.?

A. Yes.

Q. One of the defendants in this suit?

A. Yes; sure.

Q. Give a description and the number of acres of land owned

1416 by you, or contracted for by you, which is involved in this suit.

473 A. It is the S. ½ of the NW. ¼ S. 5, T. 109, R. 33; 80 acres; bought October 15th, 1891.

Q. How much did you pay for this land?

A. $10 an acre.

Q. Have you a deed or a contract?

A. A contract.

Q. How much have you already paid on this land?

A. $440.

Q. Have you signed an agreement or obligation to pay the bal-

1417 ance?

A. Yes, sir.

Q. And you intend to pay for the balance of this land?

A. Yes.

Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto?

A. Yes.

Q. When you purchased this land did you have any knowledge

1418 that the United States claimed the land or claimed to have any interest in it?

A. Didn't hear or didn't know anything about it.

Q. Did you have any knowledge that anyone disputed the title of the land company to the land?

A. No.

Q. This land has been known for a long time as belonging to the land company, has it not?

A. Yes; but a fellow by the name of Radle broke some on it before. 1419

Q. How long have you occupied or cultivated this land?

A. About ten years, part of it.

474 Q. Do you live on this land?

A. No.

Q. This land is part of your home farm, is it not?

A. Yes; just close to mine; join my other land.

Q. You expect to make this your home?

A. Yes; I live there, sure. 1420

Q. What is the nature of the improvements you have placed upon it?

A. Broke about thirty acres of it, and some of it in pasture, fenced.

Q. What is the value of the improvements you have on this land?

A. The improvements are worth about $200.00.

Q. How many acres under cultivation?

A. Sixty acres.

Q. How long have you had it under cultivation?

A. Some of it was broke about ten years and some of it about five or six years. 1421

Q. Is it all plowed up this fall ready for next spring's crop?

A. Yes; already for crop.

Q. How long have you paid the taxes on this land?

A. Three years.

Q. Paid all the taxes due up to date?

A. Yes, sir.

Q. How much money have you paid in taxes on this land?

A. From $9.00 to $11.00 a year; about $30 altogether. 1422

Q. What do you consider this land, together with improvements, worth?

A. About $16.00 an acre.

475 Q. Was there any summons served on you last fall by the United States in this suit?

A. Yes, sir.

Q. Who served it?

A. I wasn't at home, so didn't see him.

Q. Did the man who left the summons say for you to come in and see any particular lawyer? 1423

A. Yes; he told my folks to tell me to come in and see Mr. Somerville—this man that served the summons said for me to come in and see Somerville.

Q. Did you come in?

A. Yes, sir.

Q. Did he want some money?

A. $10 he wanted; and he would fight the claim for me.
Q. Did you pay him?
A. Yes, sir.
1424 Q. Did he want any more money from you?
A. No.

Mr. EVANS:

Q. You had seen Mr. Somerville before this—before this last time?
A. No.
Q. Didn't you see Mr. Somerville five or six years ago about this land?
A. Yes; I can't remember exactly.
Q. According to your best recollection didn't you see Mr. Somerville about five or six years ago?
1425 A. Can't remember.
Q. Did you ever hear that this was Government land?
A. No.
476 Q. Didn't you sign a paper before Mr. Somerville which was to be sent down to Washington, about this land?
A. No; I don't know anything about it.
Q. Did you ever own the W. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of section 5?
A. No.
1426 Q. Do you know of any other man by the name of Wolfgang Prandl?
A. No; no other man; it must be me.
Q. Did you build a shanty on this piece of land once?
A. Yes.
Q. Didn't you claim that this was Government land at that time; the land you built on?
A. At the time I was in Tracy trying to enter it as a homestead, I though' it was a timber claim.
1427 Q. Did you think it was Government land, subject to entry at that time?
A. At that time they told me it was Government land, and I believed it.
Q. Didn't you go to Mr. Somerville at that time to get him to draw papers for you?
A. No.
Q. To any other lawyer—Thompson?
A. No.
Q. Wasn't the neighbors talking at that time about this being Government land all around there?
A. No.
1428 Q. Do you know Anton J. Fisher.
A. No.
Q. Didn't Fisher live on this land that you claim now?
A. No.
477 Didn't Fisher cultivate it?
A. No.

Q. Didn't you come to town with Anton J. Fisher and Anton Fisher and others to see George Somerville about trying to get this land from the Government through him?

A. No; I never did. 1429

Q. Are you sure that you never signed a paper to be sent down to Washington about this land?

A. Not to my knowledge; can't remember doing it, but it might be such a thing.

Q. You do know that you were trying to get the land from the Government?

A. I and Joe Smith went up to Tracy to have them look it up.

Q. Who was Joe Smith?

A. He was kind of a lawyer or something up at Springfield. 1430

Mr. LAMBERTON:

Q. You never tried to get this particular piece of land from the Government, did you, Mr. Prandl—this land that you have bought from the land company?

A. No; not excepting—I don't know.

Q. Did you ever build a shanty on this land?

A. Yes; I did.

Q. Was it not the W. ½ of the NW. ¼ that you built on?

Q. How long did you live in the neighborhood?

A. Never. 1431

Q. You never lived in the neighborhood?

A. No.

Q. You didn't intend to live in that shanty when you built, did you?

478 A. No; never intended to live in it.

Q. And you never did live*d* in it?

A. No; not an hour.

Q. How big a shanty was it?

A. A shanty 12 by 14.

Q. What became of that shanty? 1432

A. Got it now for a granary.

Q. How long did it stay on that land?

A. A year.

Q. While the shanty was on that land, did you use it for anything?

A. No; didn't use it.

Q. When was it that you built that shanty?

A. Seven or eight years ago.

Q. You never believed at that time that the Government owned this land, did you?

A. No; never believed it.

Mr. EVANS: 1433

Q. You had heard that the Government owned it?

A. No.

Q. What did you build the shanty on there for?

A. Because I had heard that the land could be homesteaded.

Q. How could it be homesteaded if it wasn't Government land?

A. I don't know.
Q. You did hear that it could be homesteaded?
1434 A. Yes, sir.
Q. And for that reason you built a shanty on it?
A. Yes.
Q. You cultivated some of it?
A. Whatever was broke I cultivated.
479 Q. How much was that?
A. About thirty acres.
Q. How many years did you cultivate it that way?
A. About five or six years.
1435 Q. Then somebody came along and told you that the land company owned it?
A. Yes, they said it belonged to the land company and was in the market.
Q. Who told you so?
A. All the neighbors.
Q. Did the land company ask you to get the land?
A. No.
Q. Did the railroad company ask you to get the land?
1436 A. No.

Mr. LAMBERTON:

Q. Didn't you always know the land belonged to the land co.?
A. Never knew it before.
Q. Never before when?
A. Only about five or six years ago.
Q. Didn't you intend to buy that land from the land company as soon as it came into the market?
A. No, not before.
Q. Not before when?
1437 A. Yes, I did have an idea when it came into market that I would buy it.
Q. When you made these improvements on this land you intended to buy it, didn't you, when it came into market?
480 A. I didn't break before; not until after.
Q. When you built that shanty on the land didn't you intend to buy it as soon as it came into market?
A. Yes, I intended to buy it as soon as it came into market; I would buy it from the land company.
1438 Q. Didn't you build that shanty on there for the purpose of keeping anybody else from building on this land, so you could buy it when it did come into market?
A. Yes.

Mr. EVANS:

Q. When you built that shanty on the land, you didn't know that the land company claimed to own the land, did you?
A. No, I didn't.
Q. Well, then, how did you intend when you built it to buy the
1439 land when you didn't know the land company owned it?
A. Tried to save the land.

Q. And you built the shanty on there for the purpose of homesteading it, as you said awhile ago?
A. Yes, just for nothing.

Mr. LAMBERTON:

Q. When you built the shanty on the land, didn't you know that the land company or the railroad company owned the land?
A. I heard that they did.
Q. Didn't you build the shanty on there for the purpose of keeping anybody else off this land? 1440
A. Yes.
Q. You wanted to buy this land of the land company as soon as it came into market, didn't you?
A. Yes, sir.
481 Q. You didn't want anybody else to get ahead of you and buy this piece of land?
A. No; that was it.
Q. And that was why you built this shanty on there?
A. Yes. 1441
Q. And you didn't intend to homestead that land—you didn't think you could homestead that land at that time?
A. No.

Mr. EVANS:

Q. When you built that shanty on there, what did you build it for?
A. So I could have a house there.
Q. And didn't you intend to try and get the land from the Government when you built the shanty on there? 1442
A. Not that I can remember of.
Q. What did you build it for?
A. I don't know what for I had it built.
Q. What did you go down to Tracy for?
A. To look after that land; to have them look up the records in office about it.
Q. To find out what?
A. To look up the land to see whose it was.
Q. To what office did you go—to the U. S. land office? 1443
A. All I know was that it was a land office.
Q. When did you first learn that the railroad company or the land company had any interest in it?
A. After that.

482 Mr. LAMBERTON:

Q. When you went to Tracy, didn't you find out that the railroad company or the land company owned it, or claimed it?
A. Never anybody told me anything about it? 1444

Mr. Prandl is excused and Witness GEORGE PECHTL sworn.

Mr. LAMBERTON:

Q. What is your name?
A. George Pechtl.

Q. How old are you?
A. Thirty-four.
Q. Are you a married man?
1445 A. Yes, sir.
Q. Got a family?
A. Yes.
Q. Are you a citizen of the United States?
A. Yes.
Q. Are you one of the defendants in this action of the United States against The W. & St. Peter Railroad Company and others?
A. Yes.
Q. Give a description of the land and the number of acres
1446 owned by you, or contracted for by you, which is involved in this suit.
A. It is the undivided half of the W. $\frac{1}{2}$ of the NE. $\frac{1}{4}$ of S. 1, T. 108, R. 32; forty acres.
Q. From whom did you purchase this land?
A. The W. & St. P. Land Company.
483 Q. When?
A. February 1st, 1886.
Q. How much did you pay for this land?
A. 87.50 an acre.
Q. Have you paid for this land and got a deed?
1447 A. Yes.
Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto?
A. Yes, sir.
Q. When you purchased this land, did you have any knowledge that the United States claimed the land or claimed to have any interest in it?
A. No. I bought it from the Winona & St. Peter Land Company, and didn't have any idea of the United States having any claim to it.
1448 Q. Did you have any knowledge that anyone or any corporation disputed the title of the land company to it?
A. No.
Q. When you purchased this land, it was generally known as belonging to the W. & St. P. Land Company, was it not?
A. Yes; I bought it from them.
Q. How long have you occupied or cultivated this land?
A. About six years.
1449 Q. What is the nature of the improvements you have put upon it?
A. House, stable, and some pasture and cultivated land.
Q. How many acres of this land is under cultivation?
484 A. Fifty acres on the eighty.
Q. When did you commence to cultivate this land?
A. Six years ago.
Q. How many acres did you break the first year?
1450 Q. How long have you been cultivating the fifty acres now under cultivation?

A. For the last three years.
Q. Have you had part of it under cultivation ever since you owned it?
A. Yes, sir.
Q. How much are the improvements on the land worth?
A. About $500.
Q. Do you live on this land?
A. No; I live on a rented farm.
Q. This is your home farm, is it not? 1451
A. Yes, sir.
Q. And this is what you intend to make your home in the future, do you not?
A. Yes, my home.
Q. You bought this land for a home?
A. Yes.
Q. How long have you paid taxes on this land?
A. Six years.
Q. How much money have you paid for taxes?
A. I have no idea; when I can't give a correct number I won't 1452 guess at it.
Q. Well, how much last year?
A. $8.45 this last year.
Q. And it has been about that ever since you bought it?
485 A. Yes; I bought forty, and then forty afterwards; it is about from $6.00 to $8.00 a year.
Q. What do you consider this land worth, together with the improvements?
A. From $15 up to $25 an acre.
Q. You consider it worth $15 an acre?
A. I don't want to sell it. 1453
Q. You don't want to sell it?
A. No.
Q. You wouldn't take $20 an acre for it?
A. No; I wouldn't sell.
Q. Was there any summons served on you last fall by the U. S. marshal?
A. Nobody came around me.
Q. Wasn't there any paper left at your house at all?
A. No.
Q. You didn't know anything about this suit, did you? There 1454 was no paper ever served upon you in this suit?
A. No; no paper served on me.
Q. Then you don't know whether you are a defendant in this suit or not?
A. I don't know anything about it.

Mr. EVANS:

Q. Did you ever hear of any claim that this was Government land?
A. No. 1455
Q. Did you ever sign any paper which was sent down to Washington, or to be sent down to Washington, about this land?

A. No.

486 Q. Did you ever have any talk with Mr. Somerville about this land?

A. Yes; I had a conversation with Mr. Somerville at the time that it was thought that it was going to be homesteaded.

1456 Q. Then you have heard something about it being Government land?

A. Yes.

Q. When was that—how long ago?

A. I don't remember.

Q. Five or six years ago?

A. No.

Q. Wasn't it in '87?

A. It may be so.

Q. Didn't you see Mr. Somerville and ask him if you could homestead that land?

1457 A. Well, yes; I visited him once to question him about the land.

Q. What did Mr. Somerville tell you?

A. I didn't understand; only wrote out a piece of paper, and it cost $3.

Q. Did you sign that piece of paper?

A. No; well, I don't remember.

Q. Are you sure you didn't sign it?

A. I think I'm sure, but I don't know.

Q. How did you happen to go to Mr. Somerville?

A. A good many went up and I went along.

Q. What did you go there for?

1458 A. Because there was a cry that it could be homesteaded.

Q. After that you bought the land from the land company?

A. I had already bought it.

487 Q. In what year did you buy it?

A. In '86.

Q. You thought when you went to Mr. Somerville that if you could get it from the Government you wanted to do it?

A. Yes; I went there to protect it so it wouldn't be jumped 1459 away from me; I had it bought.

Q. Did Mr. Somerville tell you that he was going to send some papers to Washington?

A. No; he didn't.

Q. But did he draw up a paper?

A. He just simply made out the paper, and I went away in a hurry after paying him $3.00; there was more paid him the same, and I thought I would.

Mr. LAMBERTON:

1460 Q. This cry about the homestead was after you had bought the land?

A. Yes.

Q. And you didn't believe that the land could be homesteaded, did you?

A. No.

Q. But you came in to see Mr. Somerville so anybody wouldn't make you any trouble, or wouldn't try to make you any trouble about it?

A. Yes; that was what I went in for.

Q. You didn't know what this paper was that you signed? 1461

A. No; I didn't see.

Q. You do know that Mr. Somerville asked you for $3.00 and you paid it?

A. Yes.

488 Mr. Pechtl is excused and Witness WENZL SCHELLER sworn.

Mr. LAMBERTON:

Q. What is your name?

A. Wenzl Scheller.

Q. How old are you? 1462

A. Sixty-one years old.

Q. Are you a married man?

A. Yes.

Q. Got a family?

A. Yes, sir.

Q. Are you a citizen of the United States?

A. Yes.

Q. And you are one of the defendants in this suit here?

A. Yes.

Q. Give a description of the land and the number of acres 1463 owned by you, or contracted for by you, which is involved in this suit.

A. It is the NE. ¼ S. 35, T. 109, R. 32.

Q. When and from whom did you purchase this land?

A. From the Winona & St. Peter Land Company, on June 4th, '89.

Q. How much did you pay for it?

A. $11.25 an acre.

Q. How much have you already paid on this land? 1464

A. About $800 already paid.

Q. You signed an agreement to pay the balance due on this land, didn't you?

A. Yes, sir.

489 Q. And you intend to pay it?

A. Yes.

Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?

A. Yes. 1465

Q. When you purchased this land did you have any knowledge that the United States claimed this land, or claimed to any title to it?

A. No.

Q. Did you have any knowledge that anybody or any company disputed the title of the land company to it?

A. No.

Q. For sixteen years this land has been known as land company land or railroad company land?

1466 A. Yes.

Q. You have known that this land belonged to the land company for a long time, haven't you?

A. Yes, sir; known it for 26 years.

Q. How long have you occupied or cultivated this land?

A. Thirteen years.

Q. You intended to purchase it from the land company as soon as it came into market?

A. Yes, sir.

Q And when you commenced to cultivate it you knew it was

1467 land company land, didn't you?

A. Yes.

Q. And as soon as it came into market you did purchase it from the land company, didn't you?

A. Yes, sir.

490 Q. You never intended or thought of getting the land in any other way but from the land company, did you?

A. No; I have laughed at others that had the other idea that they could get it from the Government.

Q. What is the nature of the improvements you have put upon

1468 this land?

A. I bought it for $11.25 an acre, and wouldn't sell it for less than $25.

Q. What kind of improvements?

A. A grove and 140 acres broke and some ditching.

Q. And fences?

A. Fifty acres fenced.

Q. What are your improvements worth?

A. I don't know myself; I wouldn't sell it—want to live there.

Q. Worth a good deal of money?

1469 A. Yes; sure.

Q. As much as $800?

A. Wouldn't sell them for that.

Q. How long have you paid the taxes on that land?

A. Four years.

Q. How much do you pay as taxes on that land each year?

A. Average about $20 a year for four years.

Q. What do you consider this land, together with the improvements, worth?

1470 A. If I was obliged to sell it I wouldn't take less than $5,000.

Q. This is your home?

A. Yes, sir.

Q. That is the home farm?

A. Yes, sir.

491 Q. You want to keep it for a home for yourself and your children?

A. Yes, sir; I do.

Q. How long have you lived in the neighborhood?

A. Eighteen years.

Q. Did you live there before this railroad was built? 1471
A. Yes, sir.
Q. Do you remember, away back before the railroad was built, how speculators would come and squat on a piece of land, thinking the railroad was coming near there?
A. No; I don't remember that. It must have been before my time.
Q. Were there any papers served on you in this suit last fall?
A. Yes, sir. 1472
Q. Who served the papers?
A. I don't know. I was told that it was the sheriff from Mankato.
Q. Were you told to come in and consult a lawyer?
A. I couldn't make out what it was for. He didn't tell me just what it was for that I was to go to Mankato, but he said to come in and see Mr. Lind or Mr. Somerville and they would tell me all about it.
Q. They are lawyers here?
A. Yes, sir. 1473
Q. Did you come in to see them?
A. Yes; I came to see Mr. Somerville.
Q. Did Mr. Somerville want some money?
A. Yes; $10.
492 Q. Did you pay it?
A. Yes.
Q. What did he say it was for?
A. He said it would turn out all right, and that he would go and see to it for me.

Mr. EVANS: 1474

Q. You laughed at the fellows out there who said that the land company didn't own the land?
A. Yes.
Q. They claimed that the Government owned it?
A. Yes, sir.
Q. That was the talk around in the neighborhood?
A. Yes; Mr. Nowak and Mr. Lent claimed it was Government land, and I claimed it was railroad land; but they said, "No; it was Government land."
Q. And that was before you bought it?
A. Yes; that was before I bought it. 1475
Q. You didn't believe them?
A. No.
Q. You were willing to take your chances in buying it of the land company?
A. Yes.
Q. And you did this, notwithstanding the fact that they told you it belonged to the Government?
A. Yes, sir.

Mr. LAMBERTON:

Q. When you bought this land, you didn't think that you were 1476 taking any chances; it was railroad land, you thought?

A. Yes; I always disputed with the neighbors. I claimed it was railroad land and they claimed it was Government land.

493 Q. You didn't think you was taking any chances in purchasing it from the land company?

A. No, sir.

Q. This man that told you it was Government land—or, rather,
1477 these men, didn't pretend to know from any Government officer that it was Government land, did they?

A. No; they wanted me to get it as a homestead, and I said I would rather have it from the land company; and the nearest neighbors were after me day after day disputing about it.

Q. These neighbors that talked with you about it claimed that all these railroad lands were going back to the Government?

A. No; certain lands, but not all.

Q. That was only talk they did; they only told you?

A. Yes.

1478 Q. They didn't pretend to know, did they?

A. No.

Mr. EVANS:

Q. Do you know Xavier Seidel?

A. Yes, sir.

Q. Did you know that he ever claimed any interest in this land?

A. Yes; he had a shanty on it.

Q. Before you bought it?

A. Yes.

Q. And he claimed that it was Government land?

1479 A. Yes.

Q. And he was going to get it from the Government?

A. Yes, Mr. Nowak and Mr. Lent, and they talked him up to it and made him believe that it was Government land.

494 Q. How did Seidel happen to go off?

A. They had been building and moving in the neighborhood, and they got some news from Redwood, and they heard it was no good filing on it and they pulled the shanty down.

Q. And then you bought it?

1480 A. Yes.

Q. How long ago did Seidel have a shanty on there?

A. Six or seven years ago.

Q. How long did he stay on the land?

A. Never went on the land.

Q. Did he ever live on the land in the shanty?

A. No.

Q. How big was the shanty?

A. It was so small he couldn't live in it—only about 4 by 6; big enough for a coffin.

Q. Did he ever cultivate any of the land?

1481 A. No; I wouldn't allow him to after I moved there; I would have whipped him off.

Q. Did Seidel ever intend to live on that land?

A. No.

Q. Did you ever know of anybody but you living on that land?
A. No.
Q. Nobody ever cultivated that land but you?
A. No.

Mr. Scheller is excused, and Witness FRANK SCHROEPFER sworn. 1482

Mr. LAMBERTON:

Q. What is your name?
A. Frank Schroepfer.
495 Q. What is your age?
A. Sixty-one.
Q. Are you married?
A. Yes, sir.
Q. Got a family?
A. Yes, sir. 1483
Q. A citizen of the United States?
A. Yes.
Q. Are you a defendant in this suit?
A. I got no paper.
Q. No papers ever served on you in this suit?
A. No, sir.
Q. Give a description of the land and the number of acres owned by you which is involved in this suit.
A. It is the SW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ and the E. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ S. 5, T. 108, R. 32; bought June 11th, 1889. 1484
Q. You purchased this from the W. & St. P. Land Company?
A. Yes.
Q. How much did you pay?
A. $10 an acre.
Q. Have you got a deed?
A. No; not yet.
Q. How much have you paid?
A. I *kon't* know exactly; over $700.
Q. Have you signed an obligation to pay the balance on this land? 1485
A. Yes, sir.
Q. And you intend to pay the balance?
A. Yes, sir.
496 Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
A. Yes.
Q. When you purchased this land, did you have any knowledge that the United States claimed to own the land, or claimed to have any interest in it? 1486
A. No.
Q. Did you have any knowledge that any one or any company disputed the title of the land company to this land?
A. No.

Q. You knew for a long time that this land belonged to the W. & St. P. Land Company?
A. Yes.
Q. How long have you occupied it?
1487 A. Four years.
Q. Do you live on it?
A. No.
Q. But this is part of your home farm, isn't it?
A. Yes.
Q. What kind of improvements have you on this land?
A. Ninety acres broken.
Q. Any of it fenced?
A. No, sir.
1488 Q. Is that land all plowed up this fall ready for next spring's crop?
A. Yes, sir.
Q. What are your improvements worth?
A. About $300.
497 Q. You commenced to cultivate this land four years ago?
A. Yes.
Q. And you have had ninety acres under cultivation ever since?
A. Yes, sir.
1489 Q. How long have you paid the taxes on this land?
A. Four years.
Q. How much have you paid in taxes?
A. About $10 every year; about $40 altogether.
Q. What do you consider this land worth?
A. I don't know; about $16 an acre.
Q. You wouldn't like to sell it at all, would you?
A. No.
1490 Q. You wouldn't take $16 an acre for it?
A. No; I'm going to keep it.
Q. No papers ever served in this suit upon you?
A. No, sir.
Q. You didn't know anything about this suit, nor any suit?
A. No.
Q. Did you have the records examined to see who owned this land before you bought it?
A. No, sir.
Q. You knew this land was all right?
1491 A. Yes; it belonged to the land company and was all right.
Q. Didn't you have Mr. Bertrand look the title up?
A. Yes, sir; and he said it was all right.
498 Q. He said the title was all right?
A. Yes, sir.
Q. And he was the county auditor at that time, and examined the records for you, and then you purchased it from the land company?
A. Yes, sir.

1492 Mr. EVANS:

Q. What made you go to Bertrand?

A. I came down to pay taxes, and as somebody had said it was Government land I just asked him.

Q. You were anxious about it?

A. No; it wasn't because I was anxious, but I just asked him.

Q. You just asked because somebody said it was Government land?

A. Yes, sir.

Q. Somebody told you that this land belonged to the Govern- 1493
ment instead of the land company?

A. Yes, sir.

Q. They said it was going back to the Government?

A. Yes, sir.

Q. And that is why you inquired about it?

A. Yes, sir.

Q. And that was before you bought it?

A. No; it wasn't.

Q. After you bought it?

A. Yes. 1494

Q. Did you ever hear of anything before you bought it?

A. No.

Q. You never heard anything?

499 A. No; I never did.

Q. There were back taxes on it when you bought it?

A. I didn't ask.

Q. Didn't you pay them?

A. No.

Q. Had anybody lived on this land before you bought it? 1495

A. No.

Q. Was there any shanty on it?

A. Yes; one about 14 by 16.

Q. Who built it?

A. John Wiggins.

Q. For himself?

A. No; for his son. He said his son was in the army, and got it for a soldier's claim.

Q. So you did hear something about it before you bought it?

A. That was about two years. John Wiggins said it would go 1496
back to the Government.

Mr. LAMBERTON:

Q. Mr. Wiggins never lived on this land?

A. No.

Q. His son died in the army?

A. Yes, sir.

Q. No one else ever told you that it belonged to the Government?

A. No; and I never believed it.

Q. You had the county auditor examine the title to it? 1497

A. Yes.

Q. And he told you the title was good?

A. Yes, sir.

500 Mr. Schroepfer is excused, and Witness CARL PICKE sworn.

Mr. LAMBERTON:

Q. What is your name?

1498 A. Carl Picke.

Q. What is your age?

A. Forty-six years old.

Q. Are you a married man?

A. Yes, sir.

Q. Have you got a family?

A. Yes, sir.

Q. Are you a citizen of the United States?

A. I got my first papers. The time has not run to get the second. Got my first papers four years ago.

Q. You are one of the defendants in this suit of the United States

1499 against the W. & St. P. R. R. Co. and others?

A. Yes, sir.

Q. Give a description and the number of acres owned by you, or contracted for by you, which is involved in this suit.

A. It is the W. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ S. 29, T. 109, R. 33—eighty acres.

Q. When and from whom did you purchase this land?

A. From the W. & St. P. Land Company, December 7, 1890.

1500 Q. How much did you pay for it?

A. $9.00 an acre.

Q. Did you buy any other land that used to belong to the company?

A. Yes; the other half.

501 Q. Who did you purchase that land from?

A. Theodore Webber.

Q. How much did you pay for that?

A. $9.00 an acre.

1501 Q. His contract was assigned over to you?

A. Yes, sir.

Q. When did you purchase that from him?

A. In '91.

Q. Have you got a deed?

A. No, a contract.

Q. How much have you paid on all of it?

A. About $600.

Q. Have you signed an obligation to pay the balance on this land?

A. Yes, sir.

Q. And you intend to pay it and get a deed?

1502 A. Yes, sir.

Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto?

A. Yes.

Q. When you purchased this land did you have any knowledge that the United States claimed to own the land, or claimed to have any interest in the land?

A. No.

Q. Did you have any knowledge that any person or any company disputed the title of the land company to this land? 1503

A. No, sir; but some one had broke on it.

Q. After you purchased it from the land company, you knew they didn't have any more right to it?

A. No; I asked Mr. Brown.

502 Q. You knew that this land belonged to the land company for a long time?

A. No, I didn't; I haven't lived here long.

Q. You live on this land?

A. Yes, sir.

Q. And you cultivate it?

A. Yes. sir. 1504

Q. This is your home farm?

A. Yes, sir.

Q. You have got a house on it?

A. Yes, sir.

Q. How long have you lived on and cultivated this land?

A. Three years.

Q. What kind of improvements have you got on it?

A. A house and barn and a corn crib, and that is all the buildings. 1505

Q. Under cultivation?

A. Some of it—85 or 90 acres.

Q. Is it all plowed up now ready for next spring's crop?

A. Yes.

Q. You commenced to cultivate this three years ago?

A. Yes, sir.

Q. How much the first year?

A. About thirty-five acres.

Q. How much the second year? 1506

A. Oh, nearly ten.

Q. How much the third?

503 A. About forty-five or all the rest; I plowed it two times after the first summer, and cleaned it all up, and I count that in the improvements; about eighteen acres that had been broken.

Q. How long have you paid the taxes on this land?

A. About three years.

Q. How much have you paid as taxes?

A. About $50.00 altogether. 1507

Q. What are your improvements worth?

A. About $600 for buildings and $300 for breaking; $900 altogether.

Q. How much do you consider this land, together with the improvements, worth?

A. I don't know; I wouldn't sell it. Some claims it is worth about $18 or $20 an acre, and I think it is somewhere around there.

Q. You wouldn't take $20 an acre for it?

A. No, sir.

Q. You want to make it your home?

1508 A. Yes, sir.
Q. It is your home now?
A. Yes, sir.

Mr. EVANS:

Q. What is the name of the man who broke some of that land before you went on to it?
A. It was broke by two; one man's name was Holm.
Q. He was going to try to get it as a homestead?
A. Yes, sir; that was what he said. He said something about it after I bought the land. He wanted me to keep off the land.
1509 Q. Were you down in that neighborhood before you bought the land?
A. I was not acquainted with the man at all until after I was there, after I bought the land. I was plowing it, and he
504 asked me if I was the man that had bought it, and he said it belonged to him. He said he took it as a claim.
Q. You had paid one payment at that time. How much was it?
A. $340.
1510 Q. And the balance you have paid since?
A. Yes, sir.
Q. Then you bought out this other claim afterwards?
A. Yes, sir; the other eighty; just at that time when he told me he was getting it from the Government.

Mr. LAMBERTON:

Q. You had bought the other eighty before he told you?
A. No; I can't tell you whether it was before or after; it was just about that time.
Q. When you went out on that land there was nobody on the
1511 land—there was no house?
A. No, sir.
Q. There was no one cultivating it?
A. He had plowed it; had plowed that fall for the next spring's crop.
Q. But he was not living on it?
A. No; and never lived on it.
Q. And there was never any house on it?
A. Not that I know of, until I bought it and put one on it.
1512 Q. There was no signs of any house having been on there?
A. No.
Q. What became of that man Holm?
A. He is living there; yes, sir.
Q. But he don't claim the land?
505 A. No; he put some of the land in the next year, but we had a suit about it and he paid the taxes.
Q. You won the suit?
A. Yes, sir.
Q. He had to pay rent?
1513 A. Yes, sir; to me. He had to pay the rent to us; $1.50 an acre.

Q. And he never claimed to have any interest in the land now?
A. I don't know; I never asked him; he never interferes with me.
Q. He didn't pretend to have broken that land, but didn't say that it was a homestead that had gone back?
A. No; he didn't say anything after that.
Q. Were there any papers served on you last fall? 1514
A. Yes, sir.
Q. Who was it served them?
A. I don't know.
Q. Did he tell you to come in and see a lawyer in here?
A. He said I should go in to see Mr. Somerville.
Q. Somerville is a lawyer here?
A. Yes, sir.
Q. Did you go to him?
A. No; I was at New Ulm. 1515
Adjourned until 9.30 a. m. Thursday.

506 Witness KARL FAST is sworn.

Mr. LAMBERTON:

Q. What is your name?
A. Karl Fast.
Q. How old are you? 1516
A. Forty-five years old.
Q. Are you a married man?
A. Yes, sir.
Q. Have you a family?
A. Yes, sir; two children.
Q. Are you a citizen of the United States?
A. Yes, sir.
Q. Are you one of the defendants in this suit brought by the United States against the W. & St. P. R. R. Co. and others?
A. No; never had any papers served on me.
Q. Give a description of the land and the number of acres 1517 owned by you or contracted for by you, which is involved in this suit?
A. It is the SW. ¼ of the NW. ¼, S. 11, T. 109, R. 33; forty acres.
Q. Who did you buy this land from?
A. Mike Garros.
Q. When did you buy it?
A. In '86, I guess.
Q. How much did you pay for it?
A. I paid $10 an acre; a man had been on it three years and had 1518 a little house; he paid no interest; I paid everything. I bought the land of Mike Garros; he had a contract from the Winona & St. Peter Land Company for this land, on which he had paid $80.
507 The contract was for $10 an acre; I paid Mike Garros the amount he had paid on the contract, and he assigned the contract to me. I then paid the Winona & St. Peter Land

Company the balance due on the land at the rate of ten dollars an acre and the interest due by Mr. Garros, and that gave me a deed on December 6th, 1887.

1519 Q. Is there any incumbrance on this land now—any mortgage?

A. No; no mortgage.

Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto?

A. Yes.

Q. When you purchased this land did you have any knowledge that the United States claimed the land or claimed to have any interest in the land?

A. No.

1520 Q. Did you have any knowledge that anyone or any company disputed the title of the land company to this land?

A. No.

Q. This was known out there as the Winona & St. Peter Land Company land?

A. Yes.

Q. How long have you occupied or cultivated this land?

A. Seven years.

Q. What kind of improvements have you on this land?

1521 A. A corn crib, a barn and granary, a hog barn, a chicken barn, and a house.

Q. Fences on it?

A. Yes, a pasture fenced, and two wells and pumps.

508 Q. How much broken?

A. Fifty acres, I guess.

Q. A grove set out?

A. An acre of grove.

1522 Q. How much on this eighty is broken—or this is a forty?

A. About thirty-five acres.

Q. What is the value of the improvements you have placed on this place?

A. About $1,000 improvements.

Q. You commenced to cultivate this land about seven years ago?

A. Yes, sir.

Q. How long have you paid the taxes on this land?

A. I have paid the taxes ever since I bought it.

Q. How much have you paid as taxes?

1523 A. Sometimes I paid $8.50 and to $11.00 and up to $19.00.

Q. All the taxes are paid up?

A. Yes; I pay every year.

Q. Is that land all plowed up ready for next spring's crop?

A. Yes.

Q. That is your home?

A. Yes, sir.

Q. The home farm?

A. I think so.

Q. What do you consider the land, together with the improve-

1524 ments, worth?

A. I wouldn't sell it for $25 an acre.

Q. Do you want to sell it at all?
A. No; I keep it for myself to make my living.
509 Q. You bought it for your home?
A. Yes, sir.

Mr. EVANS:

Q. You heard a good deal of talk about this land—about the Government claiming it? 1525
A. No, I never heard that.
Q. Did you hear any talk about whether the railroad company owned it?
A. No, I didn't hear that.
Q. When did you first hear of this suit?
A. I didn't hear anything about it; Mr. Brown was up in September.
Q. That was the first?
A. Yes, sir. 1526
Q. How did you find out that this land belonged to the land co.?
A. I find it out through Mr. Mike Garros.
Q. You bought from him?
A. Yes, sir; he had a contract.

Mr. LAMBERTON:

Q. Who was the lawyer, Karl, that made the transfer of the land?
A. I don't know. 1527
Q. He told you that it belonged to the land company?
A. Yes.

510 Mr. Fast excused, and Witness JOSEPH SALLMER sworn.

Mr. LAMBERTON:

Q. What is your name?
A. Joseph Sallmer.
Q. How old are you? 1528
A. Forty-four years old.
Q. Are you a married man?
A. Yes, sir.
Q. Have you got a family?
A. Yes, sir.
Q. Are you a citizen of the United States?
A. Yes, sir.
Q. Are you one of the defendants in this suit brought by the U. S. against the W. & St. P. R. R. Co., and others?
A. Yes, sir. 1529
Q. Give a description of the land and the number of acres owned by you, or contracted for by you, which is involved in this suit?
A. It is the E. $\frac{1}{2}$ of the SW. $\frac{1}{4}$, S. 31, T. 109, R. 32. Eighty acres.
Q. When and from whom did you purchase it, and what was the price?

A. The Winona & St. Peter Land Company; June 22d, 1889; $10 an acre.

Q. Did you purchase this land in good faith, believing that you
1530 were getting an absolute title in fee simple thereto?

A. Yes.

Q. You have a contract for this land?

A. Yes, sir.

Q. How much have you paid on the land?

511 A. I paid the co. $600.

Q. You have signed an obligation to pay the balance on this land?

A. Yes, sir.

Q. When you purchased this land, did you have any knowledge
1531 that the United States claimed to own the land, or claimed to have any interest in it?

A. No, sir.

Q. Did you have any knowledge that anyone or any company claimed to have any interest in it?

A. No; everybody said it was railroad land.

Q. Do you live on this land?

A. No.

Q. How long have you cultivated this land?

A. Forty acres, twelve or fourteen years.

Q. You cultivated it before you bought it?

1532 A. Yes, sir.

Q. You intended to purchase it from the land company as soon as it came into market?

A. Yes, sir.

Q. And you did purchase it?

A. Yes, sir.

Q. When you commenced to cultivate it the land company hadn't offered it for sale?

A. No, I couldn't buy it then.

Q. This is part of your home farm?

A. Yes, sir.

1533 Q. What kind of improvements have you placed on this land?

A. I broke and plowed it.

Q. How many acres have you broken?

A. The whole eighty.

512 Q. How long have you had the whole eighty under the plow?

A. Ever since I bought it.

Q. Is this land all plowed up ready for the crop next spring?

1534 A. Yes, sir.

Q. How much do you think your improvements are worth?

A. $280.

Q. How long have you paid the taxes on this land?

A. Just so long as I have had the land.

Q. How much money have you paid?

A. About $11 or $12 a year.

Q. All the taxes are paid now up to date?

A. Yes, sir.
Q. What do you consider this land worth?
A. $15 an acre. 1535
Q. You wouldn't sell it for $15 an acre?
A. No.
Q. That is your home?
A. Yes, sir.

Mr. EVANS:

Q. You heard that the United States claimed this land, didn't you?
A. Yes, I heard so last fall. They sent a man from Mankato—a sheriff from Mankato—and he left a card. 1536
Q. Did you ever hear before that the United States claimed the land?
A. Yes, I heard before.
Q. When was that?
513 A. I don't know; nine or ten years ago.
Q. You heard then that this was Government land, and a good many people went to Tracy about it?
A. One fellow would say it was Government land and another say it was railroad land. A fellow at Tracy said it was railroad land; a lawyer said it was Government land. 1537
Q. Who was it at Tracy told you?
A. A lawyer at Tracy.
Q. Was he the land agent?
A. It was a lawyer; and another man said it was land company land.
Q. What land office?
A. In Tracy.
Q. Do you know Andrias Gribner?
A. Yes, sir.
Q. Did you know that he claimed this land as Government 1538 land?
A. No.
Q. Did you ever hear that?
A. No.
Q. What did these people say that said it was Government land?
A. Some of them said that it was railroad land and others said it was Government land.
Q. There was a good deal of talk in the neighborhood about this land—about the title to this land?
A. Yes. 1539
Q. The people generally were talking about who this land belonged to?
A. There was some said it was Government land and some said it was land company land.

514 Mr. LAMBERTON:

Q. Did you go to the Government land office at Tracy and ask who this land belonged to?

A. Yes, sir.
Q. What did he tell you?
1540 A. That it belonged to the land company.
Q. That was the Government land officer?
A. Yes, sir.

Mr. Sallmer is dismissed and Witness FRED ALWEIN sworn.

Mr. LAMBERTON:

Q. What is your name?
A. Fred Alwein.
Q. How old are you?
1541 A. Thirty-eight.
Q. Are you a married man?
A. Yes, sir.
Q. Have you a family?
A. Yes, sir.
Q. And you are a citizen of the United States?
A. Yes, sir.
Q. Are you one of the defendants in this action brought by the United States against the W. & St. P. R. R. Co. and others?
A. No, sir.
1542 Q. Give a description of the land owned by you, or contracted for by you from the W. & St. Land Company, which is involved in this suit.
A. It is the N. ½ of the NW. ¼ S. 11, T. 109, R. 33. Eighty acres.
515 Q. From whom did you purchase this land?
A. W. & St. P. Land Co.
Q. When did you purchase it?
A. In '84.
Q. Have you a deed of it yet?
A. Not yet.
1543 Q. A contract?
A. Yes, sir.
Q. How much have you paid?
A. About $600.
Q. You signed an obligation to pay the balance?
A. Yes, sir.
Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto?
A. Yes.
Q. When you purchased this land did you have any knowledge
1544 that the United States claimed to own this land or claimed to have any title to it?
A. No, sir.
Q. Did you have any knowledge that anyone or any company claimed to have any interest in the land?
A. No, sir; I didn't.
Q. This land was known out there as belonging to the Land Co.?
A. Yes, sir.
Q. Do you live on this land?

A. I live on another eighty near this.
Q. How long have you occupied and cultivated this land? 1545
A. About eight years.
Q. What kind of improvements have you put on this land?
516 A. Only breaking.
Q. How many acres broken?
A. Twenty-five or thirty acres.
Q. How many acres are now broken?
A. About fifty acres.
Q. Is that all plowed up ready for next spring's crop? 1546
A. Yes.
Q. This is your home farm?
A. Yes, sir.
Q. That is where you live?
A. Yes, sir.
Q. You have had about fifty acres under cultivation ever since you owned it?
A. Yes, sir.
Q. How long have you paid the taxes?
A. For the last nine years. 1547
Q. How much money have you paid for taxes?
A. $86.
Q. What do you consider the improvements worth—the breaking, etc.?
A. About $125.
Q. What do you consider the land worth, including the improvements?
A. About $15 an acre.

Mr. EVANS:

Q. Last fall wasn't there a paper left at your house by the U. S. marshal? 1548
A. Why, yes, sir.
Q. To go to Mankato?
A. Yes, sir.
Q. Did you read it?
517 A. I wasn't at home.
Q. And that was in this suit, wasn't it?
A. Yes, sir.
Q. Did you go to Mankato?
A. No, sir.
Q. Where did you go? 1549
A. I went to Mr. Somerville.
Q. Had you ever talked with Mr. Somerville before about this land?
A. A long time ago there was talk about this land.
Q. There was a good deal of talk about this land?
A. Yes, sir.
Q. And that talk was that it was Government land?
A. Yes. 1550
Q. That was the talk generally out in your neighborhood?
A. Yes.

Q. Didn't you go to see Mr. Somerville then?
A. No; I never was to see Mr. Somerville at that time?
Q. Was you to see somebody else about it?
A. Lind was here once—in the spring—and we were in the office talking this over.
Q. How long ago?
A. About five years ago.
1551 Q. Who was with you at that time?
A. Oh, there was William Straasburg and Ferdinand Myer and a whole lot.
Q. How many altogether?
A. Lots of them—fifteen or twenty.
518 Q. What were you there for—what did you go to the office for?
A. Well, I don't know.
Q. What did you do?
A. Talked about this land—about its being Government land.
1552 Q. Did you sign any papers there?
A. Yes, sir.
Q. To be sent down to Washington?
A. Yes, sir.
Q. You gave the paper to Mr. Lind, did you?
A. I don't know.
Q. It was to be sent to Washington?
A. Yes.
Q. You were trying to get this land from the Government?
1553 A. I didn't try; I just went to hear what was said.
Q. You signed the paper?
A. Yes, sir.
Q. And that paper was to go to Washington?
A. Yes, sir.
Q. To the U. S. Land Office in Washington?
A. Yes, sir.
Q. You wanted the Government to bring suit against the land company and the railroad company?
A. No.
Q. Didn't that paper say so?
1554 A. I don't know.
Q. You knew what it was at the time, didn't you?
A. Well, I didn't know just what it was.
Q. What did you know about it?
519 A. I got scared about the talk about the lands, and I didn't know where I was going to get it from.
Q. You knew what you was trying to do?
A. Yes.
Q. What was it?
1555 A. I don't know; I wasn't trying to do anything.
Q. You were down here?
A. Yes, sir.
Q. And you talked with Mr. Lind about it?
A. Yes, sir; and we had a paper and looked over.

Q. And you signed a paper?
A. Yes.
Q. And that paper was to be sent down to Washington?
A. I don't know where it goes to.
Q. It was for that purpose?
A. Yes, sir.
Q. And this was about five or six years ago? 1556
A. Yes, sir.
Q. Did you ever have any suit with the land company about this land?
A. No.

Mr. LAMBERTON:

Q. You always wanted to purchase this land from the land company?
A. Yes, sir.
Q. You never wanted to get it in any other way?
A. No.
Q. You never tried to get it from the Government? 1557
A. No.
Q. You didn't want the Government to commence this suit?
520 A. No.
Q. When you came down here that time to see Mr. Lind you had already bought the land?
A. Yes, sir.
Q. How did you happen to come down to see him?
A. My wife told me to come down. 1558
Q. Why did you come down—to make sure that you could get it?
A. Yes, sir.
Q. To see what was going to be done about it?
A. Yes, sir.
Q. When you came here you say you signed a paper, did you? Who told you to sign that paper—did Mr. Lind or Mr. Somerville?
A. No; they never told me to.
Q. Why did you sign it—do you know that you did sign it? 1559
A. I'm not sure.
Q. Do you know what was in it?
A. No, sir.
Q. Did you know then?
A. No, sir.
Q. All you wanted to do was to be sure that you wouldn't have any trouble about the land?
A. That was all.
Q. You wanted to get a deed from the land company?
A. Yes, sir. 1560
Q. Did these men charge you any money?
A. Yes, sir.
Q. Who was it?
A. Lawyer Thompson.
521 Q. Was he at the meeting that day that you saw Mr. Lind?
A. Yes.

Q. How much did he charge you?
A. I can't say how much; maybe $2 or $3.
1561 Q. They charged everybody some money?
A. Yes, sir.
Q. Who did the other men pay their money to?
A. I didn't see them.
Q. Did Mr. Thompson tell you that you had to do this to protect your land?
A. No.
Q. But that was what you were there for?
A. Yes, sir.
Q. Now, then, did this Government officer that was out at your place last fall—did he tell you to come in and see Mr. Somerville?
1562 A. Yes, sir.
Q. And did Mr. Somerville charge you some money?
A. $10.
Q. Has he since written you a letter asking you for more money?
A. Yes; last spring.
Q. How much did he ask for then?
A. $15 more.
Q. Did you send it?
1563 A. No, sir.
Q. Mr. Somerville was with Mr. Lind at that time?
A. Yes, sir.
Q. And one of the lawyers that talked to you?
A. Yes, sir.
522 Q. Did you understand this paper that you signed?
A. No, sir.
Q. You didn't know what it was?
A. No, sir.
Q. Did you know what the paper was for?
1564 A. No.
Q. Did you know what these men were going to do with this paper?
A. No, sir.
Q. You thought it was for the purpose of protecting your title to your land out there?
A. Yes, sir.
Q. You don't understand English very well?
A. Not very well.
Q. When the attorney, Mr. Evans, asked you if this paper was to go down to Washington, you didn't understand him?
1565 A. No, sir.
Q. You didn't know what was to be done with that paper?
A. No, sir.

Mr. EVANS:

Q. You knew it was to go down to Washington?
A. That was what they said.
Q. You understood that, didn't you?
A. Yes, sir.
1566 Q. And they told you it was going down to Washington?

A. Yes.
Q. Who told you that?
A. I don't know.

523 Mr. Alwein is dismissed, and Witness WILLIAM STRAASBURG sworn.

Mr. LAMBERTON:

Q. What is your name?
A. William Straasburg.
Q. How old are you? 1567
A. Forty-seven.
Q. Are you a married man?
A. Yes.
Q. Got a family?
A. Yes, sir.
Q. Are you a citizen of the United States?
A. Yes, sir.
Q. And you are one of the defendants in this suit against the W. & St. P. R. R. Company?
A. Yes, sir.
Q. Give a description of the land and the number of acres 1568 owned by you, or contracted for by you, which is involved in this suit.
A. It is the E. ½ of the NE. ¼, S. 11, T. 109, R. 33, bought May, '84; and the W. ½ of the NE. ¼, same section, township, and range, bought May 10th, 1886; one hundred and sixty acres.
Q. Who did you purchase this land from?
A. The W. & St. P. Land Co.
Q. Have you a deed for that land?
A. Yes, sir; for one eighty.
Q. How much did you pay for that eighty? 1569
A. $10 an acre.
Q. You have a contract for the other eighty?
A. Yes, sir.
Q. How much have you paid on that contract?
524 A. I paid $9 an acre—about $600 altogether.
Q. How much more have you to pay on that land before you get a deed?
A. A little over $200.
Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto? 1570
A. Yes, I thought so.
Q. When you purchased this land, did you have any knowledge that the United States claimed to own the land or claimed to have any interest in it?
A. No, I bought it as railroad land.
Q. Did you have any knowledge that anyone or any company disputed the title of the land company to the land?
A. No.
Q. Everybody knew that it belonged to the land company? 1571
A. Yes, when I bought it.

Q. You live on this land?
A. Yes, sir.
Q. And you cultivate it?
A. Yes.
Q. This is your home farm?
A. Yes, sir.
Q. How long have you occupied or cultivated this land?
A. Since 1884.
1572 Q. What is the nature of the improvements that you have placed upon this land?
A. House, barn, granary, pig stable, chicken house, reaper sheds, and pasture fenced, and ditched it.
Q. How many acres broken?
525 A. 120 acres broke.
Q. All under the plow?
A. Yes, sir.
Q. You have it all plowed now, ready for next year's crop?
1573 A. Yes.
Q. How much are your improvements worth?
A. $3,900.
Q. You commenced to cultivate this land in '84?
A. Yes, sir.
Q. How many acres did you break the first year?
A. Thirty-five.
Q. How many the next?
A. A little more than forty acres.
Q. How much the next?
A. I broke some every year.
1574 Q. How many years have you paid the taxes on this land?
A. Ever since I owned it.
Q. How much taxes have you paid?
A. $194 taxes I have paid.
Q. What do you consider this land worth?
A. $4,000.
Q. That is your home?
A. Yes, sir.
Q. And that is where you want to live?
A. Yes, sir.
Q. Did you ever want the Government to commence suit against
1575 the land company for this land?
A. No, sir.
Q. You are satisfied with getting a deed from the land company?
A. Yes, sir.
526 Q. When that paper was left last fall, was any word left for you to go and see any lawyer?
A. Yes, sir; Somerville.
Q. Did you come down to see Somerville?
A. Yes, sir.
1576 Q. Did he want some money from you?
A. Yes.
Q. What did he charge you?

A. $10.
Q. Did he write, asking for more money?
A. Yes.
Q. Did he get more?
A. I didn't give him any more.

Mr. EVANS:

Q. When did you buy the land?
A. In '84.
Q. Did you buy both pieces at that time? 1577
A. No.
Q. When did you buy the second piece?
A. In '86.
Q. Did you live on this land before you bought it?
A. No.
Q. You had heard a good deal about the title to this land; about who it belonged to?
A. They told me it was railroad company land.
Q. Did anybody say anything alse?
A. Not the first time. 1578
Q. When do you mean?
A. When I bought the first piece.
Q. After that you heard so?
A. Yes, sir.
527 Q. There was considerable talk about it belonging to the Government?
A. Yes, sir.
Q. What year was that?
A. I couldn't remember.
Q. Five or six years ago? 1579
A. I couldn't tell.
Q. Did you take any interest in that?
A. No, sir; I was down here to hear what the others said.
Q. You was down here?
A. Yes.
Q. Your neighbors with you?
A. Only one—Alwein.
Q. You signed a paper?
A. No, sir; I didn't sign any. 1580
Q. You are sure?
A. No, sir.
Q. What was the paper for?
A. I don't know.
Q. Was it not talked about then?
A. You mean the paper?
Q. Yes; the papers.
A. They was talking about it then, and I wouldn't pay any money; I had bought the land, and I wanted to see how it was coming out.
Q. You are sure you didn't sign any papers? 1581
A. No, sir; I didn't sign any papers, and I didn't pay any money.

Q. Did you hear anything about it after that?
A. No; not until last year.

528 Mr. LAMBERTON:

Q. You never heard any talk about this land—before you bought it?
A. No, sir.
Q. You never heard but what the land company had a good title
1582 to it?
A. No, sir.
Q. Some time after you bought this land, you heard talk about the land?
A. Yes, sir.
Q. Now, then, five or six years ago, did they tell you to come in and see Mr. Lind and Mr. Somerville?
A. Nobody told me to come.
Q. Who did you meet here?
A. A good many.
Q. What lawyers?
A. Two or three.
1583 Q. Lind and Somerville?
A. Lind, but not Somerville, and Thompson.
Q. Did they want you to pay some money?
A. Yes, sir.
Q. What did they tell you?
A. They told me if I didn't pay I would lose my land.
Q. Did they want you to sign some papers at that time?
A. I told them I wouldn't pay no money.
Q. And then they didn't want you to sign any papers?
1584 A. No, sir.
Q. How much money did they want?
A. I couldn't tell.
Q. Did they want money from everybody there?
A. Yes, sir.
529 Q. Do you know what they were trying to do?
A. I don't know anything about it.
Q. Lind was there?
A. Yes, sir.
Q. He was the Congressman from this district?
1585 A. I couldn't tell.
Q. Lind is a one-armed man?
A. Yes, sir.

Mr. EVANS:

Q. Who wanted you to pay money?
A. I don't remember whether it was Thompson or Lind.
Q. How much?
A. I don't know; couldn't say for sure.

Mr. LAMBERTON:

Q. Lind and Thompson were together?
1586 A. Yes, sir.

Mr. Straasburg is excused and Witness FERDINAND TREBESCH sworn.

Mr. LAMBERTON:

Q. What is your name?
A. Ferdinand Trebesch?
Q. How old are you?
A. Fifty-two.
Q. Are you a married man?
A. Yes, sir. 1587
Q. Have you a family?
A. Yes, sir.
Q. Are you a citizen of the United States?
A. Yes, sir.
530 Q. And you are one of the defendants in this suit?
A. Yes.
Q. Give a description of the land owned by you which is involved in this suit.
A. It is the S. ½ of the SW. ¼, S. 3, T. 109, R. 33. Eighty 1588 acres.
Q. From whom did you purchase this land?
A. From the W. & St. P. Land Company, October 3rd, 1882.
Q. Have you got a deed?
A. Yes, sir.
Q. Is it all paid for, then?
A. Yes, sir.
Q. How much did you pay for it?
A. $9.00 an acre.
Q. Did you purchase this land in good faith, believing that you 1589 were purchasing an absolute title in fee simple thereto?
A. Yes.
Q. When you purchased this land, did you have any knowledge that the United States claimed any interest in this land?
A. I thought it was railroad land; I didn't hear anything else.
Q. Did you have any knowledge that anyone disputed the title of the land company to the land?
A. I didn't hear anything at that time.
Q. This land was known out there for a long time as belonging 1590 to the land company?
A. Yes; so long as I was here.
Q. You live on that land?
A. No; not on that eighty.
531 Q. But it is part of your home farm?
A. Yes; just a road between.
Q. How long have you occupied and cultivated this land?
A. For eleven years.
Q. What improvements have you on this land? 1591
A. About ten acres ditched and about fifty acres broken.
Q. How long have you been cultivating fifty acres?
A. Ever since I lived there.
Q. Any fences?
A. No, sir.

Q. You cultivate about fifty acres and ditched ten?
A. Yes.
1592 Q. You used the rest of it as hay land?
A. Yes, sir.
Q. What is the value of the improvements you have put on it?
A. About $200.
Q. What is the ditching worth?
A. About $50.
Q. How long have you paid the taxes on this land?
A. For eleven years.
Q. The taxes are all paid up to date?
1593 A. Yes, sir.
Q. How much money have you paid in taxes?
A. $87.28.
Q. What do you consider this land worth?
A. $1,500 for the eighty.
532 Q. Part of your home farm?
A. Yes, sir.
Q. It is where you live?
A. Yes, sir.
Q. Did you ever want the Government to commence suit for this land?
1594 A. No.
Q. Do you know whether there was any man that tried to get the settlers to try to get the Government to commence a suit?
A. Lind talked around.
Q. He is a lawyer at New Ulm.
Q. You never wanted such a suit commenced?
A. No, sir.
Q. You wanted your title from the land company?
A. Yes, sir.
1595 Q. Did you desire the Government or anyone else to commence suit to get this land?
A. No.
Q. Did you come here to Sleepy Eye to a meeting here?
A. No; not a step.
Q. Did the Government official leave any paper with you last fall?
A. Yes; but I wasn't at home. He said to go to Somerville and he would fix it up.
Q. Did you go to him?
1596 A. Yes, sir.
Q. Did he charge you anything?
A. $10.
Q. Did he want any more?
A. Yes, sir.
533 Q. Did he want you to come to see him again?
A. Yes; but I wouldn't come to him any more.

Mr. Trebesch is excused and Witness JOHN HAALA sworn. 1597

Mr. LAMBERTON:

Q. What is your name?
A. John Haala.
Q. How old are you?
A. Forty-five years old.
Q. Are you a married man?
A. Yes, sir.
Q. Have you a family?
A. Yes, sir.
Q. Are you a citizen of the United States? 1598
A. Yes.
Q. And you are one of the defendants in this suit brought by the United States?
A. Yes, sir.
Q. Give a description of the land and the number of acres owned by you, or contracted for by you, which is involved in this suit.
A. It is the W. ½ of the SE. ¼, S. 33, T. 109, R. 33. Eighty acres.
Q. When and from whom did you purchase this land? 1599
A. December 4th, 1889; from the W. & St. P. Land Company.
Q. You have a contract for this land?
A. Yes, sir.
534 Q. When you pay for it, you are to get a deed?
A. Yes, sir.
Q. How much have you paid for the land now?
A. $576 altogether.
Q. Did you purchase this land in good faith, believing that you 1600 were purchasing an absolute title in fee simple thereto?
A. Yes.
Q. Did you have any knowledge that the United States claimed to own this land or claimed to have interest in it?
A. No.
Q. Did you have any knowledge that anyone or any company disputed the land company's title to it?
A. No, sir.
Q. This land has been known for a long time as belonging to the land company?
A. Yes, sir; I knew it for a long time—about twenty-two years. 1601
Q. And you knew it to belong to the land company?
A. Yes, sir.
Q. How long have you occupied and cultivated this land?
A. Four years.
Q. What kind of improvements have you put on this land?
A. Seventy-five acres under the plow.
Q. Any buildings? 1602
A. No.
Q. What do you consider your improvements worth?
A. About $300.

535 Q. How long have you been cultivating seventy-five acres of this land?

A. Since I bought it; the next year I break it up, except two acres I broke this year.

Q. Is that land all under the plow now—plowed up ready for
1603 the crop next spring?

A. Yes, sir.

Q. How many years have you paid the taxes on this land?

A. Three years.

Q. How much money have you paid as taxes?

A. $30, altogether.

Q. What do you consider the land worth, with the improvements?

A. It is worth $20 an acre, but I wouldn't sell it for $20 an acre.

Q. You don't want to sell it?

1604 A. No, sir.

Q. Is this your home farm?

A. Pretty close to it.

Q. You want to keep it?

A. Yes, sir.

Q. That is where you want to live and die?

A. Yes, sir.

Q. Did you ever want the United States to commence suit against the land company for this land?

A. No, sir.

Q. You want to be allowed to go on and make your payments
1605 and get a deed from the land company?

A. Yes, sir.

Q. You have no fault to find with the Winona & St. Peter Land Co.?

A. No; I haven't.

536 Mr. EVANS:

Q. How long since you bought the land?

A. In '89.

Q. You heard before that time talk about this land?

1606 A. I heard talk about it, yes.

Q. What was that talk?

A. Oh, I don't know; just talk in the neighborhood.

Q. You heard about the Government being owner of it?

A. No, sir; I don't remember; not before I bought it.

Q. Was not the question in the neighborhood as to who owned it?

A. I heard all the time that the railroad company owned it,
1607 except last year.

Q. You didn't hear any of this talk before you bought it?

A. I guess not; I don't remember.

Mr. LAMBERTON:

Q. Was there any papers served on you in this suit?

A. Yes, sir.

Q. Did that Government official instruct you to come down to see an attorney?

A. Yes, sir; and I asked him what he wanted, and he said to 1608
come down to Somerville and he would tell me what to do.
Q. He is a lawyer?
A. Yes, sir.
537 Q. Did you come down?
A. Yes, sir.
Q. Did he charge you some money?
A. Yes; $10.
Q. Has he written you a letter since asking you for more money?
A. Yes, sir; last spring. 1609
Q. What did he want then?
A. He didn't say; he just said he wanted more money; I not see him.
Q. What did he say in that letter?
A. I throwed the letter away.
Q. Did you go and see him?
A. No, sir.
Q. In that letter he told you that he wanted more money?
A. Yes.
Q. He said there was something more to do in this suit, and that was what he wanted it for? 1610
A. Yes, sir.

Mr. Haala is dismissed, and Witness JOHN W. KALBE sworn.

Mr. LAMBERTON:

Q. What is your name?
A. John W. Kalbe.
Q. How old are you?
A. Fifty-two years old. 1611
Q. Are you a married man?
A. Yes, sir.
Q. Have you a family—children?
A. Yes, sir; lots of them.
538 Q. Are you a citizen of the United States?
A. Yes, sir.
Q. And you are one of the defendants in this action of the United States against The W. & St. Peter Railroad Company and others?
A. Yes, sir; that is what they claim. 1612
Q. Well, you had papers served on you last fall?
A. Yes.
Q. Give a description of the land and the number of acres owned by you, or contracted for by you, which is involved in this suit.
A. It is the E. ½ of the SE. ¼, S. 5, T. 109, R. 33; eighty acres.
Q. From whom did you purchase this land?
A. From W. & St. P. L. Co.
Q. When did you purchase it?
A. Jan. 7th, '86. 1613
Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto?

A. I did.

Q. When you purchased this land, did you have any knowledge that the United States claimed to own the land or claimed to have any interest in it?

A. It had been filed on—I don't know whether it was previous or afterwards.

1614 Q. You didn't have any knowledge that the United States claimed it?

A. No; not to my knowledge.

Q. Did you have any knowledge that anybody or any company disputed the land company's title to it?

539 A. No, except the Government; I understood that the land had been filed on before the railroad company got the charter.

Q. There was nobody on the land when you got it, and no improvements?

1615 A. No, sir.

Q. It was known there for years that the land company owned it?

A. That was the understanding.

Q. Did you have the records examined before you bought it?

A. I didn't.

Q. How long have you occupied and cultivated this land?

A. I commenced in the spring of '86, breaking up; broke it all 1616 year after year up until about four years ago. It is all broke.

Q. What kind of improvements have you on it?

A. Broke it up and farmed it; that is all.

Q. It is part of your home farm?

A. Yes, sir.

Q. How much are your improvements worth?

A. About $200.

Q. How many acres did you break the first year?

A. I can't hardly tell. I wasn't there myself.

Q. How many acres have you got broken now?

A. All but about four acres under the plow.

1617 Q. And you have got it all plowed up this fall for the next crop?

A. Yes, sir.

Q. How long have you had it all broken up?

A. Since about '90.

540 Q. How long have you paid the taxes on this land?

A. Ever since '86.

Q. How much have you paid as taxes?

A. In the neighborhood of $50.

1618 Q. What do you consider this land worth?

A. About $1,200.

Q. You say you heard one time that a fellow had had a filing on this land?

A. Yes; previously a man was on that quarter. He was an old soldier, and he said he took it as a homestead, but finally left it. I got there about '72, and there has been a filing on one quarter, on the SE. ¼ of section 5.

Q. How did you find it out?

A. Our town clerk knew the man that filed on it.
Q. He told you?
A. He told me. 1619
Q. You never heard anything more, except what you were told?
A. No.
Q. Nothing in the records here?
A. I never examined the records.
Q. You never thought but what you owned this land?
A. That was my calculation.
Q. And before you bought it you thought that the land company owned it?
A. Yes, sir. 1620
Q. You bought it to make a home of it?
A. To live on with my family.
Q. Did you ever want the Government or anyone else to commence suit against this land?
541 A. I never authorized anyone to commence action in my name.
Q. Did you ever want anyone to?
A. No, sir.
Q. You were satisfied with the land company?
A. Yes, sir; I paid them for it. 1621
Q. No fault to find with them?
A. No.
Q. Were there papers served on you last fall?
A. Yes.
Q. Did they leave word for you to come in and see any man in Sleepy Eye?
A. I saw him myself, and I asked him who he was, and he said deputy U. S. marshal, and I asked him what it was for, and he said, "You go to Mr. Somerville and he will tell all about it."
Q. What did Mr. Somerville say? 1622
Q. He talked around a good deal, and, like the most of them, he knows it all, and I wanted to know of him what he would do for me down at Mankato—and oh, I gave him fits, and said Somerville didn't know anything about it; and Somerville didn't get any money out of me at all.
Q. The deputy marshal was in Somerville's office?
A. Yes, sir.
Q. How long have you lived out here?
Q. Twenty-four or five years.
Q. Before the railroad was built?
A. Yes, sir. 1623
Q. Do you remember whether it was a custom for speculators out here to go on ahead of the railroad and file on lands supposing the railroad was coming near?
542 A. I don't remember.
Q. Before your time?
A. Well, we all supposed that the odd sections was railroad land.
Q. Speculators did come out here and file on the even sections at that time, didn't they? 1624

A. I don't know whether I would call them speculators—but settlers.

Q. And when the railroad didn't come near them they would abandon their claims?

A. Yes; some of them always disposed of theirs. I never knew of anyone abandoning their claim that had a title to it—without having a title to it.

Mr. EVANS:

Q. How many years ago did you first hear of this first filing on this land?

1625 A. It was when they commenced to make money.

Q. The first time?

A. After the action was commenced of the United States.

Q. You said that a good many years ago there was a man who claimed to have a homestead of this piece of land?

A. After the Government served papers—this man told me that this piece was included in this difficulty; there was a man filed on the quarter before the railroad got their charter.

1626 Q. Prior to the time you bought it you didn't hear any question about it?

A. Not before I bought it.

Q. You bought it in '86?

A. Yes, sir.

543 Q. And what you heard about its being filed on was after you had bought it?

A. After I bought it.

Q. Had any one plowed on it before you bought it?

A. No.

1627 Q. Did you have any talk with the man that claimed he had homesteaded a piece out there?

A. That was that man who lived on that quarter.

Q. That you bought?

A. The half of it.

Q. Did he live on that piece that you bought?

A. Not on the eighty that I bought, but it belonged to the same quarter.

Q. When was that?

A. I couldn't tell.

Q. Before you bought it?

1628 A. Yes.

Q. Has this man that was living there claimed to have any interest?

A. He did.

Q. Part of that was what you afterwards bought?

A. Yes.

Q. What was his name?

A. King; I don't know what his first name was. He abandoned it because he didn't know who had the title to it.

Mr. LAMBERTON:

1629 Q. That was in '72?

A. About that time.

Q. This man didn't put up any shanty until long after the rights of the railroad company had attached to it?

544 A. No; he came there about six months after, and in '82——

Q. He abandoned it and took another homestead?

A. That is what he told me.

Q. When you bought this land you didn't know that anybody 1630
had filed on it years ago, did you?

A. No.

Q. You didn't know there was any question about it until they began to make money on it here in town?

A. That is what I mean.

Q. Who do you mean?

A. These lawyers here.

Q. What lawyers here?

A. Somerville and Thompson and Lind; other people told me. 1631

Q. That is what you thought?

A. Yes, sir; I had my deed to the land, and I didn't care for anybody.

Q. At the time these men began to try to make money out of this land?

A. When people went and filed on it previous to last fall, of course some of them asked me if I didn't go and see who had the title to the land, and I told them I had good title to my land.

Q. You understood that Mr. Somerville and Thompson and Lind were advising men to make trouble for the money they would 1632
get out of it?

A. I heard different talk; some of them say they would get the land from us for $1.00 an acre; that is, from the Government—that is what they told me.

545 Q. Mr. Lind was Congressman from this district?

A. Yes, sir.

Q. And a lawyer at New Ulm?

A. Yes.

Mr. EVANS: 1633

Q. You didn't mean to be understood as knowing anything about this particular piece of land?

A. No.

Q. You didn't mean to say that any of these men had a contract to pay $1.00 an acre?

A. No, sir; they didn't tell me.

Mr. LAMBERTON:

Q. The men told you that they made a contract?

A. No; they made no contract, but it was the understanding—only talk; no papers.

Mr. EVANS: 1634

Q. Did any one man tell you?

A. These men what had land was in trouble that way; but if I was to say who it was, I couldn't tell. I was in conversation with some of them and we kind of talked the matter over; of course

they told me it was going to be fought out, and they would have to pay so much down, and if they got it from the Government they would pay $1.00 per acre. I wouldn't swear to it just how it was.

1635 Mr. LAMBERTON:

Q. These men told you that they had made this agreement with the lawyers?

A. In some respects; I dont know if it was mutual.

546 Mr. Kalbe is excused and CLAUS MINERT sworn.

Mr. LAMBERTON:

Q. What is your name?

A. Claus Minert.

1636 Q. How old are you?

A. Forty-eight.

Q. Are you a married man?

A. Yes, sir.

Q. Have you a family?

A. Yes; I have.

Q. Are you a citizen of the United States?

A. Yes, sir.

Q. And you are one of the defendants in this suit?

A. Yes, sir.

Q. Give a description of the land and the number of acres owned by you or contracted for by you, which is involved in this

1637 suit.

A. It is the W. $\frac{1}{2}$ of the SW. $\frac{1}{4}$, S. 9, T. 109, R. 33, eighty acres; and the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, forty acres. The first bought June 1st, '87, and the forty May 15th, '84.

Q. How many acres do you own there?

A. Eighty acres.

Q. You purchased this of the W. & St. P. Land Company?

A. Yes, sir.

Q. Have you got a deed for any of this land?

1638 A. A deed for the first forty.

H. How much did you pay?

A. $9.00 per acre.

Q. It is all paid for?

A. That forty; yes, sir.

547 Q. Have you got a contract for the other forty; and how much did you pay?

A. A contract, yes; $10 an acre.

Q. How much have you paid?

A. All but $80.

1639 Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto?

A. Yes.

Q. When you purchased this land did you have any knowledge that the United States claimed to own this land, or claimed to have any interest in it?

A. No, sir.
Q. Did you have any knowledge that anyone or any company disputed the title of the land company to this land?
A. No, sir. 1640
Q. You have known this land for a great many years as belonging to The Winona & St. Peter Land Company?
A. Yes, sir; as long as I have been there.
Q. It was generally known as land-company land?
A. Yes.
Q. How long have you occupied and cultivated this land?
A. About thirteen years.
Q. You cultivated some of it before you purchased it? 1641
A. Yes.
Q. When you commenced to cultivate it, you couldn't buy it, as it was not in the market?
A. No, sir.
548 Q. You intended to buy it when you commenced to cultivate it?
A. Yes, sir.
Q. After it came into market you did purchase it, didn't you?
A. Yes; sir; not at first, but afterwards. 1642
Q. What improvements have you on this land?
A. About fifty acres broken and three hundred rods of fence.
Q. How much are your improvements worth?
A. About $200 or $300.
Q. How long have you had fifty acres under cultivation?
A. About twenty-five acres since the first year. I don't know how many acres I broke each year.
Q. Is this land all plowed up now, ready for the crop next spring? 1643
A. Yes, sir; all plowed.
Q. How long have you paid the taxes on this land?
A. Ever since I bought it.
Q. How much money have you paid for taxes on this land?
A. Pretty nearly $75.
Q. What do you consider this land worth?
A. About $15 an acre.
Q. This is part of your home farm?
A. Yes, sir. 1644
Q. Where you want to make your home?
A. Yes, sir.
Q. And that is your home?
A. That is my home.
549 Q. Did you ever want the Government or anybody else to commence suit against the land company for this land?
A. No, sir.
Q. You never did?
A. No, sir. 1645
Q. You were satisfied to purchase this land from the land company?
A. Yes, sir.

Q. That is what you wanted to do?
A. Yes, sir.
Q. Last fall, was there a Government officer served some papers on you?
A. Yes, sir; but I was not at home.
Q. Did he leave word for you to come in here?
A. Yes; he said to come in and see Somerville.
1646 Q. Did you come?
A. Yes, sir.
Q. What did he say?
A. He wanted $10 from me, and I wouldn't give it to him.
Q. Then what did he say?
A. He said if I was smarter than he was, I ought not to come.
1647 Q. Did you tell him that the man told you to come?
A. Yes, sir.
Q. You wouldn't pay him the $10?
A. No, sir.
Q. He is a lawyer here?
A. Yes, sir.

550 Mr. EVANS:

Q. When did you buy the land?
A. In '84, and one ¼ in '87.
Q. Did you hear any talk about this land before you bought it?
1648 A. No. At that time one man filed on it. I don't know what year.
Q. Was that before you bought it or after?
A. When I bought the first forty.
Q. You don't know whether you had bought the second forty or not, then?
A. No, sir.

Mr. LAMBERTON:

Q. You don't know whether you bought the second forty before
1649 they claimed that the Government owned it?
A. Nobody filed on it.
Q. When was that filing made?
A. I don't know.
Q. After '84, was it not?
A. It was after '84.
Q. When you bought this land, you didn't anybody claim that it was Government land?
A. No.
Q. All you ever heard until this suit was commenced was just
1650 a rumor, wasn't it?
A. Yes, sir; that was all.
Q. Did they send out for you to come in and meet John Lind and Mr. Somerville——
A. No.

551 Mr. Minert is excused and Witness TERRY KRUMLETT sworn:

By Mr. LAMBERTON:

Q. What is your name? 1651
A. Terry Krumlett.
Q. How old are you?
A. Seventy-four years old.
Q. Are you a married man?
A. Yes, sir.
Q. Have you a family?
A. Yes.
Q. Are you a citizen of the United States?
A. Yes, sir.
Q. Are you one of the defendants in this suit brought by the United States against the W. & St. P. R. R. Co. and others?
A. No; no papers served on me. 1652
Q. Give a description of the land owned by you and the number of acres purchased of the land company, which is involved in this suit.
A. It is the SE. ¼, S. 21, T. 109, R. 32. One hundred and sixty acres.
Q. From whom did you purchase this land from, and when?
A. From the W. & St. P. Land Company, October 31, '89.
Q. How much did you pay for it?
A. $2,000. 1653
Q. Was there a squatter on that land?
A. Yes, sir.
Q. What were the improvements that you bought?
A. About sixty acres broke and a house and barn.
552 Q. How much did you pay for them?
A. $700 in all.
Q. What was his name?
A. Frank Morehouse.
Q. Did you purchase this land in good faith, believing that you 1654 were purchasing an absolute title in fee simple thereto?
A. Yes.
Q. When you purchased this land did you have any knowledge that the United States claimed the land, or claimed to have any interest in it?
A. Yes; Mr. Lind told me.
Q. You didn't have any knowledge, did you?
A. He told me a long time before.
Q. Mr. Lind told you?
A. Yes, sir; he said he could get it for me; he thought so.
Q. What did he want to try to do; what agreement did he want 1655 to make?
A. If I got the land I was to pay him $100.
Q. And he was to try to get it for you from the Government?
A. I didn't get the land from the Government; no, sir.
Q. You got it from the land company?
A. It was long before that.

Q. Lind told you that it belonged to the railroad company afterwards?

1656 A. No; he didn't say nothing so; afterwards I was down here to Thompson, and they worked together; he thought the same, and then I had Thompson write; and he said I would get the papers.

Adjourned until 1.30 p. m.

553 1.30 p. m., examination of Mr. KRUMLETT continued.

Mr. LAMBERTON:

Q. When you purchased the land, you believed that the land company owned the land?

1657 A. I didn't know; I didn't know who owned it; I expected to get it from the Government before, but when the land company put it on the market I bought it.

Q. Lind told you that he thought he could get it for you?

A. Yes.

Q. Lind said that if he got the land for you from the Government you was to pay him?

A. Yes, sir.

Q. Did you pay him any money?

1658 A. No; never any money.

Q. How long ago was that?

A. In '71, or along there.

Q. How long have you occupied and cultivated this land?

A. Since 1870.

Q. When this land came into market, you bought it from the land company?

A. Yes, sir.

Q. And you got a deed from the land company for it?

1659 A. Yes.

Q. And that is your home?

A. Yes, sir; ever since 1871.

Q. Your home farm—where you want to live?

A. Yes, sir.

554 Q. You think that you have a good title to that land?

A. Yes; and I want to keep it whether the title is good or not.

1660 Q. You don't want the Government to commence suit for the land?

A. I don't care.

Q. What improvements have you got on the land?

A. I got 120 acres broke; that is all there is to break.

Q. What else have you got on the quarter?

A. House and barns, cost $1,200.00; windmill, and fences on the whole farm, or three sides of it; machinery sheds, hog house, chicken barn, and a grove of five acres.

Q. How much are your improvements worth?

1661 A. About $4,000.

Q. How long have you paid the taxes on this land?

A. Since 1890.

Q. What do you consider this land worth now?

A. Between $6,000 and $7,000, according to what I paid for it.
Q. Five or six years ago did you come to a meeting here that Mr. Lind and Mr. Somerville called?
A. Yes; I was in.
Q. Was Lind there?
A. Yes, sir. 1662
A. What was it for?
A. I don't know; for to get the land, I suppose.
Q. As cheap as you could?
A. Yes, sir.
555 Q. Who told you to come there?
A. Thompson.
Q. Did Link talk to you?
A. Yes; he was there.
Q. Did they charge you some money?
A. No; the agreement was, if I would pay him $1.00 per acre 1663 he would get it for me?
Q. Were there many there?
A. Yes.
Q. Did he make the same agreement with all of them?
A. Yes.
Q. Did he advise them that they must try to get it from the Government, and that they were to pay him $1.00 an acre if he got the land?
A. That is the way I understood it; but if he didn't get the 1664 land we wouldn't have to pay the money.
Q. But if he got the land you would have to pay it—pay him $1.00 an acre?
A. Yes, sir.
Q. Lind was Congressman at that time?
A. I couldn't tell that—if he was or not.
Q. He is a lawyer down at New Ulm?
A. Yes.
Q. He has been Congressman from this district?
A. He has? 1665
Q. And he advised you at that time to try and get the land from they Government, and if he got it you must pay him $1.00 an acre?
A. Yes; I understood it.

556 Mr. Evans:

Q. They were acting for you as attorneys in this case?
A. Yes; the whole of them.
Q. Did you talk with Mr. Lind or somebody else?
A. Thompson and Lind. 1666
Q. When you went on this land originally you thought it was Government land?
A. Yes; according to their talk—Lind and everybody else.
Q. You consulted with Mr. Lind in '70 or '71 and he told you that he thought it was Government land, and he was trying to get it from the Government for you.
A. Yes.

Q. And you remained on the land and cultivated it with the hope
1667 that you would get it from the Government?
A. Yes, sir.
Q. At that time were you trying to get it from the U. S.?
A. Yes.
Q. It was the general talk that these lands would go back to the Government.
A. Yes; a good deal of talk.
Q. For a great many years?
A. Yes.
1668 Q. And these men who went from your neighborhood down to Sleepy Eye with you five or six years ago had talked it over with you?
A. No; I didn't talk with nobody before I got there.
557 Q. It had been the general talk out in your neighborhood?
A. Some years, I guess.
Q. You didn't buy this land from the land company as soon as it came into the market, did you?
A. No.
1669 Q. They came to see you about it?
A. Yes; Mr. Brown.
Q. And he told you it belonged to the land company, and if you wanted a title to it you must get it from them, and if you didn't you would have to get up and leave?
A. Something like that.
Q. And in order to hold it you had to buy it, and you went to work then and bought it?
A. Yes, sir.
1670 Q. From the land company?
A. Yes; that is true.
Q. Don't you know that there are quite a number of men settled on these lands, just as you did, trying to get them from the Government?
A. I guess so.
Q. And remained on these lands, cultivating them as Government lands, and finally bought them from the land company, as you did?
A. Yes, sir.
Q. And don't you know that some of the men that settled on
1671 these lands in good faith was sued by the land company for the possession of these lands, and some of them had to get off?
A. I guess so; I never heard that they put them off.
558 Q. You did hear that they were sued?
A. Yes, sir; they told me some time ago that down around St. Peter one man had a law suit, and they charged him $20 an acre; I heard about it.

1672 Mr. LAMBERTON:

Q. When you went on this land didn't you file an application to buy it as soon as it came into market?

A. I don't know; I wrote down to Mr. Lamberton to put it on the book that I wanted to buy the land when it came into market. If I got it out of the Government or out of them I didn't care, but I wanted it as cheap as I could get it.

Q. But you wrote down there to Mr. Lamberton that you wanted to buy it as soon as it came into market? 1673

A. I don't know how it was worded.

Q. Mr. Lamberton is the agent of the Winona & St. Peter Land Co.?

A. Yes, sir.

Q. You wrote that a long time ago?

A. In '70; we didn't know then much about the land—just came up here from Wisconsin.

Q. You were never served with any papers in this suit?

A. No.

Mr. EVANS:

Q. When you wrote to Mr. Lamberton you wrote because you 1674 had heard that the land company had a claim to the land?

A. Yes.

559 Q. You heard that?

A. Yes, sir.

Q. You also heard that it belonged to the United States?

A. Yes.

Q. And you wrote to Mr. Lamberton, so that if it did belong to 1675 the land company, you would still get it?

A. Yes; I wanted to get it anyway.

Mr. LAMBERTON:

Q. You understood that the land company owned it?

A. I didn't know whether they did or not; I understood it was railroad land.

Mr. Krumlett is dismissed and Witness FRANK KRUMLETT 1676 sworn.

Mr. LAMBERTON:

Q. What is your name?

A. Frank Krumlett.

Q. How old are you?

A. Twenty-seven.

Q. You are a son of Mr. Terry Krumlett?

A. Yes, sir.

Q. You live with your father?

A. I do. 1677

Q. You were there last fall?

A. Yes, sir; I was.

Q. Do you know whether there were any summons or papers served on your father?

560 A. No, sir; there were no papers left, I am sure, and they couldn't be served without my knowing it.

Q. And there were none served?

A. No; there were none.

1678 Mr. Krumlett is excused and Witness LUDWIG REMUS sworn.

Mr. LAMBERTON:

Q. What is your name?
A. Ludwig Remus.
Q. How old are you?
A. Sixty-one.
Q. Are you a married man?
A. Yes.
1679 Q. Have a family?
A. Yes.
Q. Are you a citizen of the United States?
A. Yes.
Q. Are you one of the defendants in this suit brought by the United States against the W. & St. P. R. R. Co., and others?
A. I don't know—oh, yes.
Q. Give a description of the land owned by you, or contracted for by you, which is involved in this suit.
1680 A. It is the SE. ¼ of the NW. ¼ S. 11, T. 109, R. 33. Forty acres.
Q. From whom did you purchase this land?
A. From the W. & St. P. Land Company.
Q. When did you buy it?
A. March 26th, '87.
561 Q. How much did you pay for it?
A. $10 an acre.
Q. You haven't a deed for this land?
A. No.
Q. How much have you paid on it?
1681 A. About $445.
Q. You have signed an obligation to pay the balance?
A. Yes.
Q. And you intend to pay it?
A. Yes, sir.
Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
A. Yes, sure, or else I wouldn't have bought it.
Q. When you purchased this land did you have any knowledge that the United States claimed to own it, or claimed to have any
1682 interest in it?
A. No; only heard that it was railroad land, and the Government had no claim.
Q. Did you have any knowledge that anyone or any corporation disputed the title of the land company to this land?
A. No.
Q. This was known for a long time as belonging to the land company, was it not?
1683 A. At the time I bought it.
Q. How long have you occupied and cultivated this land?
A. Since I bought it.
Q. What kind of improvements have you put on this land?

A. Broke it all and worked it.
562 Q. The whole forty acres is broken?
A. All but ten acres broken; thirty acres broke.
Q. Have you any other improvements on this land?
A. No, only breaking—yes, and ditching.
Q. Is this land all plowed up and ready for next spring's crop? 1684
A. Yes.
Q. How much are your improvements worth?
A. About $100, but wouldn't sell them for that.
Q. How long have you paid the taxes on this land?
A. Ever since I bought it.
Q. How much have you paid for taxes on this land?
A. About $30.
Q. This is part of your home farm.
A. Yes, but I don't live on it. 1685
Q. You live near?
A. On land near it—it don't join—there is a section between.
Q. Do you work it with your home farm?
A. Yes, sir.
Q. How much is this land worth?
A. Oh, $17 or $18 an acre, but I wouldn't sell it for $25 an acre.
Q. You never wanted the United States to commence suit against the land company for this land?
A. No; I bought it from the land company, and thought they 1686 had the right to sell it to me.
Q. You never wanted them to commence suit for the land?
A. No; I never said nor thought so.
563 Q. Were there any papers served on you last fall?
A. No; I didn't get any papers, except from Mr. Somerville, and he notified me to come down and he would take charge of this matter for me, and he charged me $10.
Q. Somerville is a lawyer?
A. Yes, sir. 1687
Q. Did Mr. Somerville ever write you again, asking for more money?
A. No; he didn't write for more money, but he said for me to come in and see him; but I didn't go to see him. He said they were going to have a suit in Washington about this land—Somerville said so.

Mr. Evans:

Q. Didn't an officer come to your house last fall?
A. I don't know whether it was Somerville or some other man 1688 notified me to come in and see Mr. Somerville.
Q. Was you notified last fall to go to Mankato to court?
A. That was when I was notified to go to Mankato, but Somerville took my case for me, and I paid him $10 and didn't have to go.
Q. Before you bought this land from the land company, did you occupy it?
A. No; I didn't work it before that.
Q. Did anybody else? 1689
A. About three acres had been cultivated before I bought it.

Q. Did you know who cultivated it?

A. I don't know.

564 Q. Didn't you hear before you bought the land that there was some question about who owned it, the land company or the Government?

A. No; I didn't hear any such thing.

1690 Q. Didn't you come down here to Sleepy Eye to see about it?

A. Yes; I inquired at the bank, and the bank wrote to the land company for me.

Q. Didn't you come to Sleepy Eye to see Thompson or Somerville about it with your neighbors?

A. No; I inquired at the bank.

Q. Didn't you sign a paper at one time to be sent down to Washington about this land?

A. No; I signed a paper when I bought the land.

Q. Didn't you sign a paper to send to Washington at that time?

1691 A. No; I can't remember that.

Q. Didn't you at one time think it belonged to the Government, and try to get it from the Government?

A. I was notified by Somerville to come in here, and he told me something about the Government owning it, and that I was to pay him (Somerville) $3.00; I don't remember whether I signed any papers or not.

Q. How long ago was that?

A. Two or three years before I paid him the $10.

Q. Was it not four or five years before that?

A. I don't know for certain how long before.

1692 Q. Did Mr. Somerville at that time tell you that you could get the land?

A. He told me that he didn't know whether the Government owned it or not, but he would try and get it as a homestead;

565 he said I would better be the first man to try to get it, and he asked me for $3.00 for some papers, and I paid him.

Q. When you first came to see Mr. Somerville, had you not already bought the land from the land company—the first time you came to him?

1693 A. Yes; I didn't know Somerville was here when I bought the land.

Q. You never requested Mr. Somerville to ask the Government to commence suit against the land company for this land, did you?

A. No.

Q. You never wanted the Government to commence suit?

A. No.

Mr. Evans:

Q. But you wanted to get it from the Government, if you could, didn't you?

1694 A. Yes; I would take it from the Government if I could; under the circumstances I thought I ought to be the first one, if the Government got the land.

Mr. LAMBERTON:

Q. You never tried to get this land from the Government, did you?

A. No; no other way, except that Mr. Somerville offered to get it from the Government.

Q. Did Somerville want $1.00 an acre for this land?

A. He didn't get it of me.

Q. How much did Mr. Somerville propose to get it for? 1695

A. He didn't ask me any sum.

Q. You never signed a paper for Mr. Somerville, did you?

A. No; I don't remember of signing anything.

566 Mr. EVANS:

Q. Didn't you pay $3.00 for Mr. Somerville to get up some papers for you?

A. I paid him $3.00 so if I was the first man I would get the land.

Q. Didn't you sign papers that Mr. Somerville got up for that 1696 purpose?

A. I don't know whether I did or not.

Mr. LAMBERTON:

Q. At the time you paid Mr. Somerville you had already bought the land of the land company?

A. Before that.

Q. Was the only reason that you came to see Somerville that you might be sure that you wouldn't have any trouble about the land?

A. He told me to pay the $3.00 to fix the papers so I would be the first one to get it if it was Government land. 1697

Q. Mr. Somerville notified you?

A. Some one called me to come in here.

Q. Didn't you always intend to pay the land company for that land?

A. Yes, sir.

Mr. Remus is excused and Witness FRED MIELKE sworn.

Mr. LAMBERTON: 1698

Q. What is your name?

A. Fred Mielke.

Q. How old are you?

A. Fifty-seven years old.

567 Q. Are you a married man?

A. Yes.

Q. Have you a family?

A. Yes.

Q. Are you a citizen of the United States?

A. Yes, sir. 1699

Q. One of the defendants in this action?

A. Yes.

Q. Give a description of the land and the number of acres owned by you, or contracted by you, which is involved in this suit.

A. It is the W. ½ of the NE. ¼ S. 9, T. 109, R. 33, purchased May 10th, '81; and the SW. ¼ of the SE. ¼ and the E. ½ of the SW. ¼ S. 9, T. 109, R. 33, purchased October 10th, '87; and the E. ½ of the NW. ¼ and the NW. ¼ of the SE. ½ S. 9, T. 109, R. 33, Oct. 13th, '84; also the N. ½ of the SW. ¼ S. 3, T. 109, R. 33,
1700 purchased June 3, '86.

Q. From whom did you purchase this land?

A. From the W. & St. P. L. Co.

Q. How much did you pay?

A. For some $10 an acre and for some $8.75 an acre.

Q. Have you got a deed of this land?

A. One eighty.

Q. How much did you pay for that land?

A. $10 an acre.

Q. How much have you paid for the balance; that that you haven't a deed for?

1701 A. About $3,000.

Q. You have signed an obligation to pay the balance on this land?

A. Yes, sir.

568 Q. And you expect to pay it?

A. Yes, sir.

Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?

1702 A. Yes.

Q. When you purchased this land, did you have any knowledge that the United States claimed to own it, or claimed to have any interest in it?

A. No.

Q. Did you have any knowledge that anybody disputed the title of the land company to it?

A. No.

Q. You have known this land for a long time as belonging to the land company?

A. Since I came here in '79.

1703 Q. How long have you occupied this land?

A. Ever since I bought it.

Q. You live on this land?

A. Yes, sir.

Q. Is it your home farm?

A. Yes, sir.

Q. What improvements have you on this farm?

A. Buildings and grove, barns and fences, hog houses and chicken coops, and some ditching.

Q. How many acres broke?

A. All except pasture; I can't tell just how much.

1704 Q. What are your improvements worth?

A. Between $6,000 and $7,000.

Q. You have cultivated it ever since you owned it?

A. Yes, sir.
569 Q. It is plowed now ready for next spring's crop?
A. Yes, sir.
Q. How many years have you paid the taxes?
A. Ever since I bought it.
Q. The taxes are all paid up?
A. Yes, sir. 1705
Q. How much have you paid in taxes?
A. Between $60 and $70 a year.
Q. What do you consider this land worth, together with the improvements?
A. About $25 an acre.
Q. How many acres altogether?
A. Four hundred and eighty.
Q. Your sons live on this land?
A. Yes, sir.
Q. You have a son a married man?
A. Yes, sir.
Q. And that is his home there, too? 1706
A. Yes, sir.
Q. And you bought this as a home for yourself and sons?
A. Yes, sir.
Q. Did the U. S. marshal serve any papers on you last fall?
A. On my wife; I was not at home.
Q. Did he leave word for you to see a lawyer here?
A. Yes.
Q. Who was it?
A. No one in particular—to see my lawyer. 1707
Q. Did you come to see a lawyer here?
A. Somerville.
Q. What did he say? Did he charge you anything?
570 A. Yes; he charged me $10, but I didn't pay it; I said I would go and see to myself.
Q. Is that all he said?
A. Yes.
Q. You never wanted the U. S. Government to commence suit against the land company for this land? 1708
A. No; I never thought about it at all.
Q. Never wanted it done?
A. No; I didn't.

Mr. Evans:

Q. You did hear that this was Government land?
A. Yes.
Q. That was the talk around in the neighborhood?
A. Yes, sir.
Q. How long ago was that?
A. About seven years ago.
Q. You heard that talk a good deal about seven years ago? 1709
A. Yes; I was in Mr. Thompson's office, and Mr. Lind was there, and other folks talking.
Q. What did you go there for?

A. Folks told me that that land was going back to the Government—railroad land.

Q. And you went to see about it?

A. I went up; yes.

Q. Did you sign any papers while you was there?

A. No, sir.

Q. Sure of that?

1710 A. No, sir.

Q. Did you sign any afterwards?

A. No, sir.

Q. Did you do anything at all?

A. No, sir.

571 Q. Were your sons with you?

A. Otto.

Q. Seven years ago?

A. No; not then.

Q. You heard at that time about the Government. Was that

1711 before or after you had bought the land?

A. After.

Q. Had you bought it all then?

A. Yes.

Q. Did you cultivate it before you bought it?

A. No, sir.

Q. Had anybody else cultivated it?

A. About twelve acres.

Q. Who was it?

A. John Lesemann.

Q. What claim did he have to it?

1712 A. No claim; just worked it; and when I went there I asked him if he was going to any more—if he was going to plant corn on that piece again—and he said "No." And he said he thought there was good enough land that he could get without that.

Q. How long have you lived out there?

A. Since 1879.

Q. There has been more or less talk about its belonging to the Government or the land company?

A. No, sir; not before I bought it.

1713 Mr. LAMBERTON:

Q. You say you saw Mr. Lind and Mr. Somerville and Thompson. Were they together?

A. No; Mr. Somerville and Lind in Thompson's office.

572 Q. Did Mr. Lind want to pay him some money?

A. I didn't talk with him.

Q. Did Mr. Thompson want some money from you?

1714 A. I didn't see him; there was a big crowd there; he put up a paper, but didn't ask me to sign it.

Q. These lawyers were talking to the farmers about this land, and they wanted the farmers to get them to try to get the land from the Government for them?

A. They said the land was going to the Government, and when it did——

Q. Were they advising the farmers to have a suit commenced?
A. I didn't hear about it.
Q. Were they advising the farmers to not buy the land from the 1715
land company?
A. I didn't hear that.
Q. What did you hear them talk about—the lawyers were getting money from them?
A. I didn't see any, but I heard that they got $3.00 from each of them.

Mr. Mielke is excused, and Witness FREDERICK W. HORRMANN sworn.

Mr. LAMBERTON: 1716
Q. What is your name?
A. Frederick W. Horrmann.
Q. How old are you?
A. Forty-eight past.
573 Q. Are you a married man?
A. Yes.
Q. Got a family?
A. Yes.
Q. Are you a citizen of the United States?
A. Yes. 1717
Q. Are you one of the defendants in this action of the government against the W. & St. P. R. R. Co., and others?
A. Yes, sir.
Q. Give a description of the land and the number of acres owned by you, or contracted for by you, which is involved in this suit.
A. It is the S. ½ of the SE. ¼ S. 3, T. 109, R. 33. Eighty acres.
Q. You bought this from the W. & St. P. L. Co.?
A. Yes, sir. 1718
Q. When did you purchase it?
A. The 23d of June, 1886.
Q. How much did you pay?
A. $700.00.
Q. You have a deed for it?
A. Yes, sir.
Q. When you purchased this land, you bought it in good faith, believing that you were getting an absolute title in fee simple thereto?
A. Yes, sir. 1719
Q. Did you have any knowledge that the United States claimed to own the land, or claimed to have any interest in it?
A. No, sir.
574 Q. Did you have any knowledge that anybody disputed the title of the W. & St. P. Land Company to the land?
A. No, sir.
Q. You have known for a long time that this land belonged to the land company? 1720
A. Yes, sir.
Q. How long have you occupied it?

A. Since '86.

Q. What is the nature of the improvements you have put on this land?

A. A pasture, fenced, and about twenty acres broke, and about two acres of grove.

Q. How much are your improvements worth?

A. About $260.

Q. You commenced to cultivate this land in '86?

1721 A. In '87.

Q. You have cultivated it ever since?

A. Yes, sir.

Q. Is it part of your home farm?

A. Yes, sir.

Q. You bought this to make it your home?

A. Yes, sir.

Q. How long have you paid the taxes on it?

A. Ever since I bought it.

Q. How much have you paid for taxes?

A. $12 and $13 a year.

1722 Q. What do you consider this land worth, with the improvements?

A. About $15 an acre.

Q. You never wanted the Government to commence suit against the land company for this land?

575 A. I understood after I bought it that it would go back to the Government, and I asked the lawyers about it, and they thought it would go back to the Government, and so I went then to get it from the Government.

Q. Did they charge you anything for that?

1723 A. I paid them $2.00.

Q. Who was it?

A. Thompson.

Q. Were there papers served on you last fall?

A. Yes, sir.

Q. By the United States marshal?

A. That is what I understood, and he said to be such and such a day down at Mankato.

Q. Did they say for you to come in and see Mr. Somerville?

A. No; not to my knowledge.

1724 Mr. EVANS:

Q. You had heard about this land—about the title being questioned?

A. Yes.

Q. Before that?

A. No, not before; I didn't have any idea but it belonged to the land company.

Q. Was in not in '87 that you came to see Mr. Thompson about getting it from the Government?

A. No; not more than a year ago.

Q. Now, was it not in '87?

A. It was later than that; about a year last summer.

Q. Well, whenever it was, you came to see Mr. Thompson about it, and he told you that he thought it would go back to the Government, and you employed him to get it for you if it did—and did you sign a paper to go down to Washington. 1725

576 A. Not to go to Washington—an agreement between us?

Q. Didn't you sign a paper to go to Washington?

A. No, sir; never.

Q. Are you sure of it?

A. Yes, sir. 1726

Q. You did sign a paper at that time?

A. Yes, sir; a paper.

Q. You don't recollect what the paper was?

A. Not exactly.

Q. But you do know that you were trying to get the land from the Government at that time at the Government price?

A. Yes.

Q. And you wanted Mr. Thompson to act for you in that matter?

A. Yes, sir.

A. And you don't know whether you signed a paper to go to Washington or not? 1727

A. I don't think I signed such a paper.

Q. Wasn't that in '87?

A. No; later than that.

Q. Was there anyone with you?

A. I was alone in his office.

Q. You were willing to get the land from the Government at the Government price if you could?

A. Why, certainly; I was willing.

Mr. LAMBERTON:

Q. The time you came in to see Mr. Thompson was a year ago last summer? 1728

A. I will not be certain; about two years ago.

Q. How near could you tell. You are certain it was not in '87?

577 A. I am pretty sure it was after that time.

Q. And you are certain that you signed an agreement that was going down to Washington—or was the paper you did sign an agreement between you and Mr. Thompson?

A. I thought I was signing a paper to pay Mr. Thompson if he got the land from the Government for me. 1729

Q. What was that agreement?

A. The agreement was this way: If he would get back from the land company the money what I had paid, and the land from the Government, I was to pay him for his work what might amount to $15, but not more, and $1.00 an acre for the land—the land that was in dispute.

Q. You have a good memory, haven't you?

A. I don't know. 1730

Q. You can remember pretty well?

A. In some cases I can.

Q. You are pretty sure that the time you saw Mr. Thompson was not more than four years ago?
A. I'll not be sure about that time.
Q. You are sure it was not in '87?
A. I don't know if it was.
Q. And the only agreement you signed was between you and Mr.
1731 Thompson?
A. That was my understanding.
Q. You never intended to sign a paper to go down to Washington?
A. Yes, sir.

578 Mr. EVANS:

Q. You did understand that you were trying to get the land from the Government, and that was why you employed Mr. Thompson?
A. Yes.
1732 Q. You did understand that if you signed you would get the land at Government price?
A. Yes.
Q. And you didn't sign such a paper?
A. No; didn't sign such a paper.

Mr. LAMBERTON:

Q. How did you happen to go to Mr. Thompson?
A. I heard about that.
Q. Did Mr. Thompson send you word to come in?
A. No; I went in to ask him.
Q. Did he say anything about John Lind?
A. I don't remember.
1733 Adjourned until 9.30 a. m. Friday, Nov. 17th.

9.30 a. m. Friday, GEORGE L. WAGNER sworn.

Mr. LAMBERTON:

Q. What is your name?
A. George L. Wagner.
Q. How old are you?
A. Sixty-eight.
Q. Are you a married man?
1734 A. Yes, sir.
Q. Have you a family?
A. Yes, sir.
Q. And you are a citizen of the United States?
A. Yes, sir.

579 Q. And are you the husband of Dorothea Wagner, one of the defendants in this suit?
A. Yes, sir.
Q. Give a description of the land owned by you or your wife which is involved in this suit?
1735 A. It is the W. $\frac{1}{2}$ of the NW. $\frac{1}{4}$, S. 27, T. 109, R. 36.
Q. How many acres?
A. Not quite eighty—a fractional quarter.

Q. From whom did you purchase this land?
A. From the W. & St. P. Land Company.
Q. And when did you buy it?
A. In the fall of '89.
Q. Have you got a deed for this land?
A. No, sir; a contract.
Q. How much have you paid on the land now?
A. About $500.
Q. You have signed an obligation to pay the balance? 1736
A. Yes, sir.
Q. And you expect to pay it?
A. Yes, sir.
Q. When you and your wife purchased this land, you purchased it in good faith, believing that you were getting an absolute title in fee simple thereto?
A. Yes, sir.
Q. The contract is in your wife's name?
A. Yes, sir.
Q. But you own it together? 1737
A. I work on the land and assist on it.
Q. When your wife purchase' this land, did you or she have any knowledge that the United States claimed the land or claimed to have any interest in it?
580 A. Not to my knowledge, because I have been there twenty-five years.
Q. And if there was any claim of that kind you would know it?
A. I should think so, because I made inquiry.
Q. And if your wife knew she would tell you? 1738
A. Yes.
Q. When this land was purchased, did she or did you have any knowledge that anybody disputed the title of the land company to the land?
A. No, sir.
Q. You have known this land for a long time?
A. Yes, sir; I was there in 1868, in the month of October.
Q. And you knew it always as land company land?
A. Yes, sir; the Winona & St. Peter Railroad Company, first, 1739 and then as the W. & St. Peter Land Company.
Q. Afterwards it was transferred to the land company by the railroad company?
A. Yes, sir.
Q. So you knew that it was land company land?
A. Yes, sir.
Q. How long have you occupied and cultivated it?
A. The first improvements was on a little patch in 1869, and I made all the rest of the improvements after that.
Q. When you commenced to cultivate this land, the land com- 1740 pany hadn't put it on the market yet?
A. No, sir; because I made inquiry from time to time from Mr. Brown and Mr. Lamberton, and they said they would let
581 me work it; and I made application to the land company to buy the land when it was for sale.

Q. They were the agents of the land company?
A. They signed their name as land commissioner.
1741 Q. You bought this land when it was offered for sale?
A. Yes.
Q. What kind of improvements have you on this land?
A. Arable land and pasture.
Q. How many acres have you broke?
A. Between thirty and forty acres.
Q. Any fences?
A. Yes, sir; all the rest is fenced.
Q. How much are your improvements worth?
A. About $400.
1742 Q. Is this land all plowed up ready for the crop next year?
A. Yes, sir.
Q. How long have you paid the taxes on this land?
A. Up to last May.
Q. Ever since you owned it?
A. Yes, sir.
Q. How much money altogether?
A. About $35.00 taxes.
Q. And you have had thirty-five acres under the plow ever since
1743 you owned it?
A. Yes, sir—or, no; I have cleared some of it since—about five or six acres.
Q. What do you consider this land, with the improvements, worth?
582 A. I wouldn't sell it less than $20.00 an acre.
Q. That is your home farm?
A. Yes, sir.
Q. Were there papers served on you last fall?
A. Yes, sir; served in her name.
1744 Q. Did the Government marshal leave instructions for you to come in and see any particular lawyer?
A. Yes, sir; I go to Mr. Somerville. He said for me to go to Somerville.
Q. Did you go to see Mr. Somerville?
A. I was not here, but my wife and other parties came down and saw him and spoke with him.
Q. What did he tell them? Mr. Somerville is associated with Mr. Lind?
A. Yes, sir.
Q. You know Mr. Lind?
A. Yes, sir.
1745 Q. He was Congressman?
A. Yes, sir.
Q. Were you in here to a meeting to see Mr. Lind and Mr. Thompson about this land?
A. I saw Lind, and Somerville, too, and I knew he was interested in this land.
Q. What do you mean? Were they trying to get settlers to go on this land?

A. They was trying to get land for settlers after receiving some money for their labor.

Q. They were trying to locate men on the land?

A. Yes, sir. 1746

Q. Mr. Lind made a business of it at that time?

A. Yes, sir.

Q. He came to you, didn't he, and tried to locate you on a piece of land, if you would pay him money?

583 A. He didn't specify the amount, and he had the land all the time and would try and locate settlers on it.

Q. And he tried to locate a settler on a piece of land that you preempted, and charged him $200?

A. Yes, sir. 1747

Q. And he made a business of trying to locate settlers on this railroad land?

A. I was told so.

Q. You have lived here, how long?

A. Came on the 17th day of October, 1868.

Q. That was long before the railroad was built?

A. Yes, sir.

Q. Do you remember whether or not it was a habit of speculators to go on ahead of the railroad and locate on to hold it for speculating purposes?

A. Yes, I knew that they did; and some Norwegians did—— 1748

Q. Went for speculating purposes?

A. I don't know whether it was for speculating or for homes.

Q. They would abandon their claims afterwards?

A. Yes, sir.

Mr. EVANS:

Q. You don't know of anybody that went on for speculating purposes?

A. I guess not, but I knew men that went on railroad land. 1749

Q. You don't know what they went on for?

A. I don't know whether they were speculating.

Q. And you don't know anything about Lind except what you were told?

584 A. Yes, sir; I know by a man that lived on the place.

Q. You don't know except what you were told? Were you present when Mr. Lind was there?

A. He was at my house settling accounts.

Q. What accounts? 1750

A. Other business, and he came in my office.

Q. Did they have anything to do with lands?

A. He talked about land.

Q. Did Mr. Lind tell you that he was charging $200?

A. No, he didn't tell me.

Q. Was Mr. Lind there?

A. No.

Q. When did he say that he charged $200?

A. Oh, that was said in a conversation in social life. 1751

Q. How long ago?

A. Shortly before the land was sold.
Q. When was that?
A. Couple of years before it was put on for sale.
Q. In '81 or '82?
A. It was somewhere in the '80's.
Q. That was when that man told you that Mr. Lind charged him $200?
A. Yes, sir, along there; I couldn't say exactly.
1752 Q. When did they commence to sell the land?
A. In '89—they sent me notice.
Q. And it was several years before that? What was that man's name?
A. John Weaver (?) or (Weber).
585 Q. And he said that Mr. Lind charged him $200 for labor?
A. For his labor—to secure land for him.
Q. Did he secure any land for him?
A. No; he never——
1753 Q. You don't know whether he ever secured it or not?
A. No; I know he didn't.
Q. When did you ever have any talk with Mr. Lind about settlers?
A. In my office?
Q. When was that?
A. It was some time in '80 or '81; he said he was collecting for S. D. Peterson, and he stopped at my place.
Q. In '80 or '81?
1754 A. Yes, sir.
Q. You said a while ago that you understood that Mr. Lind was trying to locate settlers on these lands—when?
A. In the '80's.
Q. About twelve years ago?
A. About.
Q. How many years ago?
A. Between them years—'80 and '90.
Q. About how many years ago?
A. About ten or twelve.
Q. You said a while ago that Lind and Somerville were in part-
1755 nership?
A. Not in partnership, but in assistance.
Q. Have you been talking with Mr. Lamberton about this?
A. Not in particular.
586 Q. Did you say he was in partnership with Lind?
A. As assistant.
Q. Did Mr. Lind tell you that?
A. No.
Q. Where did you see them together?
1756 A. In New Ulm.
Q. How did you happen to see them there?
A. I was called there; it was in grasshopper times.
Q. That was in the year of '73?
A. '70 something.

Q. How long after that—when was the next time you were in New Ulm?

A. I never saw him in particular about the land, but he spoke to me about the land.

Q. He did speak to you about this land—to your knowledge? 1757

A. No, sir, never; because I told him that I had made application long before that, and he was in the office and I showed him the name.

Q. There was a good deal of talk about who this belonged to?

A. No, sir; not to my knowledge.

Q. What did he say about settlers?

A. He said he had pieces of land.

Q. Was it these land company lands?

A. Yes, sir.

Q. There was some talk about the land? 1758

A. I don't know what they were talking about.

Q. Did he tell you what lands they were?

A. He didn't mention the sections.

Q. Well, how did you know?

587 A. Because I knew men living on these odd sections.

Q. Oh, he did mention sections?

A. Yes, sir; he mentioned sections.

Q. These were claimed by the land company?

A. I suppose so.

Q. You knew there was a dispute about the title? 1759

A. He never mentioned anything about who had got the land; I didn't inquire, but he told them men to go on and locate.

Q. And that they would get the land?

A. And he would secure the land for them.

Q. When was that—about when?

A. Somewhere around there; from '80 to '90.

Q. About how many years ago?

A. About ten or eleven years ago.

Q. They have been fighting with the land company? 1760

A. I didn't inquire whether they were fighting.

Q. And had a lawsuit?

A. I don't know.

Q. Did the land company try to reimburse this man that was charged $200?

A. I don't know about that; I know that one man bought land from the W. & St. P. Land Company and——

Q. Did he first settle on it?

A. Yes, sir; as a settler. 1761

Q, And afterwards bought it?

A. Yes, sir.

Q. Do you know why?

A. I don't know.

588 Q. Do you know why he bought it?

A. As his home.

Q. Why did he buy it from the land company?

A. Because he couldn't steal it.

Q. He had settled on it?
1762 A. Yes, sir.
Q. Did he think it was Government land?
A. He knew it was not Government land.
Q. And he afterwards bought it?
A. The same day I did.
Q. Is that the only case you know about?
A. I knew another man living near——
Q. And he afterwards bought the land he settled on?
A. I don't know.
1763 Q. What you know about Mr. Lind is between '80 and '90, some ten or eleven years ago; Mr. Lind said there were lands that he could locate settlers on—when he was collecting?
A. Yes, sir.
Q. And all else you know is that Mr. Weber was charged $200?
A. Yes, sir; I heard——
Q. Did the man that was charged $200 tell you?
A. I heard others said so.
Q. How many years ago?
1764 A. Before the land was put into market.
Q. Lind is a lawyer?
A. Yes, sir; I suppose so.
Q. At New Ulm?
A. Yes, sir.

589 Mr. LAMBERTON:

Q. The man that you speak of as settling on the land and afterwards buying it, was a man that Mr. Lind had located on the land?
A. I think so.
1765 Q. Was that the man that Lind charged $400?
A. No; that man lived near Lamberton.
Q. All you know about his settling, that Lind located him?
A. Yes, sir; by his advice.
Q. Mr. Lind came to you personally at your office and wanted you to let him locate you on some land?
A. He came and talked about this land.
Q. And wanted to locate you on some land?
1766 A. No, he didn't; because I wouldn't lay out any money.
Q. You told him that you wouldn't pay out money to an attorney?
A. I said I wouldn't pay until I was sure. He just talked, but never just said that I should take some land, but he told me that he had land and if I knew any person that wanted to settle I should let him know and he could fix him out.
Q. That was a few years before it came into market.
A. Yes.
1767 Q. And it came into market in '89?
A. I received notice then.
Q. Mr. Lind told you in your office that he was in the business of locating men?
A. Yes, sir; that is what he expressed.

590 Q. Did you speak to Lind at that time about charging Weber $200?

A. No, sir.

Q. Did you tell Lind that you had no $200?

A. I said I had no money to lay out. He mentioned the man at Lamberton, and I asked him, and he said he had to pay $400; 1768
told me personally.

Q. That was John Lind, who was afterwards Congressman?

A. Yes.

Mr. EVANS:

Q. You inquired of the man at Lamberton to find out how much he had to pay?

A. I inquired of the man to find if it was so that he paid so much.

Q. Did Mr. Lind tell you anything about it; did he mention 1769
any amount?

A. Yes, sir; he mentioned that amount.

Q. What did Mr. Lind tell you?

A. He said he fixed that man all right for $400 on a claim at Lamberton.

Q. Did he have any lawsuit about it?

A. I don't know anything about that.

Q. But you did take enough interest in it to ask him about the amount?

A. To see if it was true or a lie.

Q. There was a good deal of land taken by settlers in this com- 1770
munity?

A. I suppose there was.

Q. That is the way this country has been settled?

A. Yes, sir.

591 Q. And Mr. Lind has had a good deal of that kind of business?

A. Only just close by me is all I know.

Q. In your neighborhood there has been a good many settlers on lands in that way?

A. I don't know how many. 1771

Q. You know that attorneys have had charge of these matters?

A. I know that they have been located on land bought of the land company.

Q. Don't you know, as a matter of fact, attorneys throughout this country have a good deal of business of that kind—fixing up papers for settlers?

A. I don't know how many; no, I don't know any more than I have mentioned before.

Q. Is that all you know?

A. Yes, sir. 1772

Mr. LAMBERTON:

Q. When you speak of settlers you mean men that have bought land from the land company?

A. Yes; I mean those as settled.

Q. You never heard of this land as being called Government land?

A. No, sir; but I have made no inquiry of the land office; it was in '79, I think, it was changed over, and I made inquiry when
1773 it was changed from the railroad company to the land company, to find out whether it was a fact that they hold the land, whether a man could preempt it or whether it was railroad land, and they said it was not to be homesteaded.

Q. You wrote to find out before you bought this land?

592 A. Quite a while after it was transferred to the land company.

Q. And you wrote to find out before you bought it, and the Interior Department informed you that it belonged to the railroad company, and that it was railroad land?

1774 A. Yes, sir.

Q. Have you got that letter?

A. No, I haven't; I didn't keep it. I generally throw letters in the stove.

Q. And after you found out that it was land company land you made application to purchase it?

A. Yes, sir; so that I have the first right to purchase it.

Q. After it was put on the market you did purchase it?

A. Yes.

1775 Q. You never wanted the Government to commence suit against the land company for this land?

A. No, sir.

Mr. Wagner is dismissed, and AUGUST ROGOTZKE sworn.

Mr. LAMBERTON:

Q. What is your name?

A. August Rogotzke.

Q. How old are you?

1776 A. Forty-eight.

Q. Are you a married man?

A. Yes, sir.

Q. Have you a family?

A. Yes, sir.

593 Q. And you are a citizen of the United States?

A. Yes, sir.

Q. You are one of the defendants in this action?

A. No.

Q. Did you purchase the SE. ¼ of S. 21, T. 109, R. 35, from the Winona & St. Peter Land Company?

1777 A. Yes, sir; I did purchase it.

Q. When?

A. July 17th, '91.

Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto?

A. Yes.

Q. When you purchased this land did you have any knowledge that the United States claimed to own the land, or claimed to have any interest in it?

A. I couldn't say; I never thought so.
Q. You never heard so? 1778
A. No; not that I know of.
Q. Did you ever hear that anybody disputed the title of the land company to the land?
A. No, sir; I couldn't say so.
Q. How long have you occupied the land?
A. I bought it in '91; I didn't break any until '92.
Q. How many acres?
A. About fifty acres.
Q. Have you got any other improvements?
A. Why, yes; I broke this last season about twenty acres more— 1779
seventy in all broken—and then there is some of it fenced, and ten acres of meadow.
Q. How much are your improvements worth?
A. About $200.
594 Q. Have you paid all on the land yet?
A. No, sir.
Q. How much have you paid?
A. About $600.
Q. How much did you pay for the land?
A. About $1,800 in all. 1780
Q. How much are the taxes?
A. About $33 altogether.
Q. What do you consider this land worth now, with the improvements?
A. I couldn't say; I had never thought to sell, but I should say I wouldn't let it go for less than $15 an acre.
Q. And you wouldn't sell it at all?
A. I wouldn't sell it at all; I want it for my children.
Q. It was for a home?
A. Yes, sir. 1781
Q. A home farm?
A. I live on it, that is, in the summer time; but I'm going to build on it; I live now in the granary, with a kitchen, and in the winter time I go back to my other place with a house on it.
Q. And you bought this place to make a home for yourself and children?
A. Yes, sir.
Q. Do you intend pay for it?
A. Yes, sir.
Q. You signed an obligation to pay the balance? 1782
A. Yes, sir; am trying to.
Q. There were no papers served on you by the Government in this suit?
A. No; I never heard anything of it.
595 Q. You didn't know that you were sued, and don't know now?
A. No.
Q. If any papers were left at your house while you were away, you would get them?

1783 A. I would get them—why, of course.
Q. And they never left anything for you?
A. Not that I know of.

Mr. EVANS:

Q. When did you first go on the land?
A. I bought it in '91, but the breaking season was over, and the next season I break—on this I commenced to break in '92.

Mr. LAMBERTON:

1784 Q. It is all plowed up ready for next spring's crop?
A. Yes, sir; all plowed and dragged.
Q. You never wanted the Government to commence suit for this land?
A. No; I never expected that they had anything to do with it; I wanted to get it from the land company.

Mr. Rogotzke is excused and Witness HEINRICH DOHRMANN
1785 sworn.

Mr. LAMBERTON:

Q. What is your name?
A. Heinrich Dohrmann.
596 Q. How old are you?
A. Sixty-three.
Q. Are you a married man and got a family?
A. Yes, sir.
Q. Are you a citizen of the United States?
1786 A. Yes, sir.
Q. And you are one of the defendants in this suit?
A. Yes, sir.
Q. Give a description of the land and the number of acres owned by you, or contracted for by you, which is involved in this suit.
A. It is the N. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ S. 3, T. 109, R. 33—80 acres.
Q. From whom did you purchase this land?
A. The W. & St. P. L. Co.
1787 Q. When did you buy it?
A. In '82.
Q. How much did you pay?
A. $9.00 an acre.
Q. You have paid for this land and got a deed?
A. Yes, sir.
Q. Is there any incumbrance on this land?
A. No.
Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
1788 A. Yes.
Q. When you purchased this land did you have any knowledge that the United States claimed to own the land or claimed to have any interest in it?
A. No, sir.
597 Q. Did you have any knowledge that anyone or any corporation disputed the land company's title to the land?

A. No, sir.
Q. The first time you heard anything of this kind was when you were summoned?
A. In '87 I had a summons to come in here; I came in to Somerville and made inquiry.
Q. Did Somerville send word to you?
A. There was talk about the land—no.
Q. You had bought the land before that time?
A. Yes, sir.
Q. You have known this land for a long time as belonging to the land company?
A. Yes, sir.
Q. For a long time?
A. Yes, sir; as long as I have been out there; belonged to the land company, but not in the market.
Q. When it came into market you bought it?
A. Yes, sir.
Q. How long have you occupied and cultivated it?
A. Since '82.
Q. What kind of improvements have you put on this land?
A. Just what is broken is all.
Q. How many acres broken and under the plow?
A. Fifty acres.
Q. How much are these improvements worth?
A. $150.
Q. This land is all plowed up now ready for next spring's crop?
A. Yes, sir.
598 Q. How many acres did you break in '82?
A. Fifty acres in '82.
Q. Have you had that much under cultivation ever since?
A. Yes.
Q. How long have you paid the taxes on this land?
A. Since '83.
Q. How much have you paid for taxes on this land?
A. $8.00 a year.
Q. You bought this for a home for yourself and family?
A. Yes, sure; and I wouldn't sell it, either.
Q. What do you consider this land worth now?
A. $15.00 an acre.
Q. You wouldn't sell it now?
A. No.
Q. That is your home farm?
A. Yes, sir.
Q. When these papers were served on you last fall, did the marshal leave word for you to come to see Somerville?
A. No; he left a subpœna there with the boys, and I was not there—and to see Somerville, yes.

Mr. Dohrmann is excused, and Witness JOHN WEBER sworn.

Mr. LAMBERTON:
Q. What is your name?

A. John Weber.

599 Q. How old are you?

A. Fifty-six.

Q. Are you a married man and got a family?

A. Yes, sir.

Q. You are a citizen of the United States?

1795 A. Yes, sir.

Q. And one of the defendants in this suit brought by the United States against the W. & St. P. R. R. Co. and others?

A. No.

Q. Did you purchase May 28th, '91, the E. ½ and the NE. ¼ S. 27, T. 109, R. 36; also the N. ½ of the SE. ¼, in '89?

A. Yes.

Q. From whom did you purchase it?

A. The W. & St. P. L. Company.

Q. How much did you pay—for the first?

1796 A. $11.25 an acre.

Q. How much for the second?

A. For the last, $10 an acre.

Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?

A. Why, yes, sir.

Q. When you purchased this land did you have any knowledge that the United States claimed to own it or claimed any interest in it?

A. No; never thought of such a thing.

1797 Q. Did you have any knowledge that anyone disputed the title of the land company to the land?

A. No.

Q. You have known this land as belonging to the land company for a long time?

600 A. As long as I have been there.

Q. How long is that?

A. Twenty-two years.

Q. How long have you occupied or cultivated this land?

1798 A. This first eighty, about fifteen acres before I bought it; in '87, twelve acres, and three acres the next year, before I bought it.

Q. The land was not for sale then?

A. No.

Q. It was owned by the land company?

A. Yes, sir.

Q. When they offered it for sale you bought it?

A. Yes, sir; I bought it.

Q. What kind of improvements have you on this land?

1799 A. On the first eighty a good house and barn and fifty acres broken, and pasture fenced; no grove.

Q. How much are your improvements worth on this eighty?

A. Pretty close to $2,000, but I wouldn't sell it at all.

Q. What improvements have you on the other eighty?

A. No buildings, but about sixty acres broken.

Q. How much are the improvements on this eighty worth?

A. About $400.
Q. When did you commence to break that eighty? 1800
A. Most of it in '92; ten acres this year.
Q. All this land is plowed now ready for next spring's crop?
601 A. Yes, sir; all plowed.
Q. Your home farm?
A. Yes, sir.
Q. And you bought it to make a home for your family?
A. Yes, sir. 1801
Q. It was where you expect to live?
A. Yes, sir.
Q. How many years have you paid the taxes on this land?
A. Ever since I bought it.
Q. How much have you paid?
A. Paid each year from the sum of $12 to $15, and sometimes $16.
Q. How much do you consider the land all worth—the improvements and all?
A. About $15 an acre, but I wouldn't sell it for $25 an acre. 1802
Q. That is your home?
A. Yes, sir.
Q. You are sure that there were no papers served on you in this suit?
A. No; I'm pretty sure; never heard of it.

Mr. John Weber is dismissed and Witness JOHN H. WEBER sworn.

Mr. LAMBERTON: 1803
Q. What is your name?
A. John H. Weber.
Q. How old are you?
A. Thirty years.
602 Q. Are you a married man and have a family?
A. Yes, sir.
Q. Are you a citizen of the United States?
A. Yes, sir.
Q. And one of the defendants in this suit against the W. & St. 1804
P. R. R. Co. and others?
A. No; not that I know of.
Q. You are sure that no papers were served on you?
A. Not that I know of.
Q. Did you purchase the E. ½ of the NW. ¼ and the W. ½ of the NE. ¼ S. 27, T. 109, R. 36, from the Winona and St. Peter Land Company?
A. Yes, sir.
Q. How many acres?
A. One hundred and sixty.
Q. When did you purchase this land from the land company? 1805
A. The first piece in '89 and the second piece May 28th, '91.
Q. How much did you pay for this land?
A. For the first eighty, $1,000.

Q. And the second eighty?
A. $900.
Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
1806 A. Yes; I did.
Q. When you purchased this land, did you have any knowledge that the United States claimed the land or claimed to have any interest in it?
A. No; I didn't.
603 Q. Did you have any knowledge that anyone disputed the title of the land company to this land?
A. No, sir, never; never heard of such a thing.
Q. You have known this land for a long time as belonging to the land company?
1807 A. Yes, sir.
Q. How long have you occupied or cultivated this land?
A. I was there before I bought it; in '86.
Q. The land was not in the market then?
A. No; it was not.
Q. You went there to buy it when it did come into market?
A. Yes.
Q. As soon as it came into market you did buy it?
A. Yes, sir.
1808 Q. When you went on there you intended to purchase it from the land company?
A. Yes, sir.
Q. What improvements have you on this land—on the E. ½ of the NW. ¼?
A. A good barn and a good house; granary and stables, and a grove; hog house; chicken coop.
Q. How many acres are broken?
A. About sixty on that eighty.
Q. What are these improvements worth on this eighty?
1809 A. $1,200 or $1,400.
Q. What improvements on the W. ½ of the NE. ¼?
A. Not much; twenty-five or thirty acres broken.
Q. How much are these improvements worth?
604 A. About $100.
Q. You have been cultivating this land since '86?
A. Yes, sir.
Q. How many acres did you break that year?
A. I don't remember; about forty acres.
1810 Q. Have you been breaking since then?
A. Yes; a little.
Q. How long have you paid the taxes on this land?
A. Ever since I bought it.
Q. How much money have you paid for taxes on this land?
A. From $16 to $17 every year; on the second eighty from $7 to $8 a year.
Q. What do you consider this land worth now?
A. Oh, $15 an acre.

Q. You wouldn't sell it, though?
A. No; I wouldn't sell for that. 1811
Q. That is your home?
A. Yes, sir.
Q. You bought it for a home for yourself and family?
A. Yes, sir.
Q. You never wanted the Government to commence suit against the land company for this land?
A. I didn't have any idea of it.
Q. You wanted to purchase it of the land company, and thought you had purchased it of them?
A. Yes, sir. 1812
Q. You know John Lind?
A. I seen him a couple of times.
Q. Did he ever come to you and want to locate you on some land?
605 A. Not that I know of; he came to me; I was down there once.
Q. What did he say to you?
A. He said that he had a piece of land up there he would get for me, so I went to the land office at Tracy and took out some papers and left them to send to Washington. 1813
Q. How much did he charge you?
A. I don't know.
Q. How much was he going to charge you?
A. He didn't say.
Q. He made a business of locating men on land?
A. That is for them to know.

Mr. EVANS:

Q. You are a neighbor of Mr. Wagner's?
A. Yes, sir.
Q. You are the gentleman that he said told him that Mr. Lind 1814 charged you $200 and then didn't get you land—he is the same?
A. Yes, sir; he didn't charge me a cent, but——
Q. Did you ever tell Mr. Wagner that Mr. Lind charged you $200?
A. No, sir; we never spoke about it.
Q. You heard him say when he was on the witness stand that you told him that Mr. Lind charged you $200.
A. Yes, sir.

Mr. Weber is excused and Witness JOHN YAEGER sworn. 1815

Mr. LAMBERTON:

Q. What is your name?
A. John Yaeger?
606 Q. How old are you?
A. Sixty-three past.
Q. Are you a married man?
A. Yes, sir.
Q. Have you a family?

1816 A. Yes, sir.
Q. Are you a citizen of the United States?
A. Yes, sir.
Q. One of the defendants in this suit?
A. No.
Q. You didn't know anything about this suit?
A. Except Mr. Brown sent me a letter two or three days ago.
Q. That was the first you ever heard of this suit?
A. Yes, sir.
Q. No United States marshal was out to your farm last fall?
1817 A. No.
Q. Did you purchase from the land company the E. ½ of the NW. ¼ S. 35, T. 109, R. 36—eighty acres?
A. Yes, sir.
Q. When did you buy it?
A. March 28th, 1890.
Q. How much did you pay for the land?
A. One thousand dollars for the eighty.
Q. Did you purchase this land in good faith, believing that you
1818 were purchasing an absolute title in fee simple thereto?
A. Yes.
Q. When you purchased this land, did you have any knowledge that the United States claimed to own it or claimed to have any interest in it?
607 A. No, sir.
Q. Did you have any knowledge that anyone disputed the title of the land company to that land?
A. No, sir.
Q. You have known this land for a number of years as belong-
1819 ing to the land company?
A. Yes, sir.
Q. How long have you occupied or cultivated it?
A. Since I bought it.
Q. What is the nature of the improvements on this land?
A. Broke some, and got the stones off it; about thirty or thirty-five acres broken.
Q. What is the value of the improvements on this land?
A. $200.
1820 Q. How long have you paid the taxes on this land?
A. Ever since I bought it.
Q. How much a year have you paid for taxes?
A. $31.12, altogether.
Q. You have a deed for this land?
A. Yes, sir.
Q. How much is this land worth now?
A. I couldn't tell; I wouldn't sell it.
Q. But how much is it worth?
A. About $20 or $25 an acre.
1821 Q. You bought this land as a home for yourself and children?
A. Yes, sir; for a home.
Q. And you expect to make it your home, and it is your home now?

A. Yes, sir.

608 Q. You never wanted the Government to commence suit against the land company for this land?

A. No, sir.

Mr. Yeager is excused and Witness GEORGE SCHERRMAN sworn. 1822

Mr. LAMBERTON:

Q. What is your name?

A. George Scherrman.

Q. How old are you?

A. Fifty-nine last May.

Q. Are you a married man?

A. No; my wife died.

Q. You have a family?

A. Yes, sir.

Q. You are a citizen of the United States?

A. Yes, sir. 1823

Q. And you are one of the defendants in this suit?

A. Yes, sir; I got papers last fall.

Q. Give a description of the land and the number of acres owned by you or contracted for by you which is involved in this suit.

A. It is the S. ½ of the SE. ¼, S. 27, T. 109, R. 36—80 acres; and the SW. ¼ same section, township, and range—one hundred and sixty acres.

Q. You own two hundred forty acres of land?

A. Yes, sir.

Q. From whom did you purchase it? 1824

A. From the land company.

Q. How much did you pay for it?

A. For the first eighty, $11.25 an acre, and for the quarter, $1740.

609 Q. Did you purchase this land in good faith, believing that you were getting an absolute title in fee simple thereto?

A. Yes, sir.

Q. When you purchased this land, did you have any knowledge that the United States claimed the land, or claimed to have any interest in it? 1825

A. No, sir.

Q. Did you have any knowledge that anybody disputed the land company's title to the land?

A. No.

Q. You have known this land for a long time as belonging to the land company?

A. About twenty-two years ago.

Q. How long have you occupied and cultivated this land?

A. Some before I bought it. 1826

Q. When did you first commence to cultivate it?

A. About a couple of years before I bought it.

Q. You commenced to cultivate it in '89?

A. Not on that land—yes, one quarter.

Q. The land was not on the market then?
A. No.
Q. When you commenced to cultivate it you intended to buy it?
A. Yes, sir.
1827 Q. And as soon as it was offered for sale you did buy it?
A. Yes.
Q. What improvements have you put on this land?
A. On the first eighty, sixty acres are broken.
610 Q. How much is that worth—the improvements?
A. Between $200 and $300.
Q. It is all plowed up ready for the crop next spring?
A. Yes.
1828 Q. On the quarter, how much have you broken?
A. One hundred acres.
Q. Any other improvements?
A. Forty acres fenced in pasture.
Q. How much are the improvements worth on the quarter section?
A. Between $600 and $700.
Q. You have been cultivating this ever since '87?
A. Yes, sir.
Q. How many years have you paid taxes on this land?
A. Ever since I bought it.
1829 Q. How much a year?
A. About $55 altogether.
Q. What do you consider this land, together with the improvements, worth now?
A. About $15 an acre.
Q. You wouldn't want to sell it for that?
A. No.
Q. You bought it for a home for yourself and family?
A. Yes, sir; so long as I live.
Q. You never wanted the United States Government to com-
1830 mence suit against the land company for this land?
A. No, sir.

Mr. EVANS:

Q. Do you live on the land?
A. No; not on that land, but on my home land.

611 Mr. LAMBERTON:

Q. This is part of your home farm?
A. Yes, sir.

Mr. EVANS:

Q. How close to where you live?
1831 A. Just a road between.

Witness Scherrman excused and Mr. HANS KNUDSON sworn.

Mr. LAMBERTON:

Q. What is your name?
A. Hans Knutson.
Q. How old are you?

A. Forty-eight. 1832
Q. Are you a married man?
A. Yes, sir.
Q. Have you a family?
A. Yes, sir.
Q. Are you a citizen of the United States?
A. Yes, sir.
Q. Are you one of the defendants in this suit between the United States and the Winona & St. Peter Railroad Co., and others?
A. Papers not served until ten or twelve days after the time to appear; some time in November. 1833
Q. Did you purchase the E. ½ of the NW. ¼ S. 23, T. 109, R. 34, of the Winona & St. Peter Land Company?
A. Yes, sir; in the fall of '91.
612 Q. How much did you pay for it?
A. $10 an acre.
Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
A. Yes. 1834
Q. When you purchased this land, did you have any knowledge that the United States claimed to own it or claimed to have any interest in it?
A. No, sir; I didn't.
Q. Did you have any knowledge that anyone disputed the title of the land company to this land?
A. No, sir.
Q. You never heard of any such thing as that?
A. No, sir.
Q. You have known this land for a long number of years as land company land?
A. Yes, sir. 1835
Q. How long have you occupied and cultivated it?
A. I cultivated it last spring; commenced to break in the spring of '92.
Q. What kind of improvements have you on this land?
A. Thirty-six acres acres broken; cleared brush off about twenty-five or thirty acres more, and made a road.
Q. How much are the improvements that you have placed on this eighty worth? 1836
A. About $200.
Q. How long have you paid the taxes on this land?
A. Ever since I bought it.
613 Q. They are all paid up to date?
A. Yes, sir.
Q. How much money have you paid as taxes on this land?
A. Some $30 on the eighty.
Q. What do you consider this land, together with the improvements, worth? 1837
A. Well, the way the other settlers hold their land—of course I don't know what price to put on it, because I don't want to sell it.

Q. You bought it for your home?
A. Yes, sir.
Q. It is worth as much as the others are worth?
A. I wouldn't say.
Q. You wouldn't sell it for $25 an acre?
A. I wouldn't like to part with it. In case that I had to, I
1838 don't know what I would charge. I would want as much as the others are asking, anyway?
Q. You bought it for a home for yourself and family?
A. Yes.
Q. And that is your home now?
A. Well, partly.
Q. Part of your home farm?
A. As soon as I can turn this other property of mine into cash, I intend to build and make this my home.
Q. You wouldn't sell?
1839 A. No, sir; not at all.
Q. When this officer left the summons, did he leave any other paper?
A. Just a slip from Mr. Somerville here—his name was
614 signed—and when I noticed that the time was past, so that it was no use to come and see him, I didn't pay any attention to it.
Q. This slip was from Somerville?
A. Yes, sir.
Q. What was in the slip—to come in to see him? Have you got the slip now?
1840 A. I don't know exactly what was in it.
Q. Did it say to come in to see Mr. Somerville?
A. Yes, sir; it was that; but I couldn't remember every word.
Q. You didn't come to see Mr. Somerville?
A. No, sir.

Mr. EVANS:

Q. Did you go to see anybody?
A. No, sir.
1841 Q. Did you employ Mr. Lamberton (the attorney here) to talk for you?
A. No, sir.
Q. You didn't employ him to answer for you?
A. No.
Q. Did you ever see or hear of him before?
A. Not that I know of.
Q. You never paid him any money to talk for you in this examination?
A. No; I didn't.
1842 Q. And you never authorized him to appear for you in this suit?
A. No, sir.
Q. Didn't you ever know that he did appear for you?
A. I—know it now.
615 Q. Did Mr. Lamberton ever see any paper from Mr. Somerville?

A. I don't know.
Q. Do you know how he happened to guess what was in it?
A. No; I don't know. 1843

Mr. Knudson is dismissed, and the meeting adjourned until 1.30 p. m., when JACOB BRUST is sworn.

Mr. LAMBERTON:

Q. What is your name?
A. Jacob Brust.
Q. How old are you?
A. Sixty-three.
Q. Are you a married man?
A. Yes, sir. 1844
Q. And you have a family?
A. Yes, sir.
Q. Are you a citizen of the United States?
A. Yes, sir.
Q. Are you one of the defendants in this suit of the Government against the W. & St. P. R. Co., and others?
A. Not that I know of. Oh, yes; a summons served last fall.
Q. Did you purchase from the W. & St. P. Land Co. the N. ½ 1845
of the SE. ¼ S. 25, T. 109, R. 33—eighty acres?
A. Yes, sir.
Q. When did you purchase it?
A. June 12th, '89.
616 Q. How much did you pay for it?
A. $900.
Q. How much have you paid already?
A. About $700.
Q. You owe, then, about $200?
A. About $320. 1846
Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
A. Yes; that was my belief.
Q. When you purchased this land, did you have any knowledge that the United States claimed it?
A. No; not exactly.
Q. Did you have any knowledge that any one disputed the land company's title to it?
A. No.
Q. You have known this land for a long time as belonging to 1847
the land company?
A. I heard about it; I don't know how long.
Q. How long have you occupied or cultivated this land?
A. Three or four years ago.
Q. What improvements have you put on the land?
A. I broke the whole eighty up.
Q. What is the value of those improvements?
A. About 250. 1848
Q. When did you commence to cultivate the land?

A. The first year—I broke twenty acres about three years ago last summer.

617 Q. Is this land all plowed up now ready for next spring's crop?

A. Yes, sir.

Q. How long have you paid the taxes on this land?

1849 A. Ever since I owned it.

Q. How much money have you paid out as taxes on this land?

A. I can't remember exactly how much.

Q. What do you consider this land worth—how much do you think?

A. Oh, about $13 or $14 an acre.

Q. You bought this land to farm it?

A. Yes, sir.

Q. And you intend to farm it?

A. Yes, sir.

1850 Q. You don't want to sell it now?

A. No.

Q. When the summons was served on you last fall, did the man tell you to see anyone in particular about it?

A. No; I received the notice, but I didn't go down; they said the company had to look after it.

Mr. EVANS:

Q. What company do you mean?

A. The land company.

1851 Q. Now, you said in answer to Mr. Lamberton's question as to whether or not you had heard of any claim on the part of the United States to this land before you bought it, "Not exactly;" now did you ever hear of any claim—of any talk about it?

618 A. It was long before I bought my piece I heard there was a dispute about it, and when I bought it Mr. Brown said he would give me a good title to it.

Q. You did hear, however, that there was some question about it?

1852 A. A long time ago.

Q. You heard that the United States claimed it?

A. I think it was the other road—the St. Paul and Sioux City; I think the fight was between the two roads.

Q. You didn't hear anything about the Government claiming the land?

A. I only know what I saw in the papers about the fight between the roads.

Q. Did you ever see anything about it going back to the Government?

A. No.

1853 Mr. LAMBERTON:

Q. You never wanted the United States to commence suit for this land?

A. No; I didn't expect it.

Q. And you don't want it?

A. No.

Witness Brust is excused and Mr. PETER YACKEL sworn.

Mr. LAMBERTON: 1854

Q. What is your name?
A. Peter Yackel.
Q. How old are you?
A. Fifty-eight.
619 Q. Are you a married man?
A. Yes, sir.
Q. Have a family?
A. Yes, sir.
Q. Are you a citizen of the United States?
A. I got my first papers. 1855
Q. You are one of the defendants in this action of the United States against the W. & St. P. R. R. Co. and others?
A. Yes, sir; I got papers last fall
Q. Did you purchase of the W. & St. P. L. Co. the NE. ¼ S. 29, T. 109, R. 36, one hundred and sixty acres?
A. Yes, sir.
Q. When did you purchase it?
A. In 1889.
Q. How much did you pay?
A. $1,800. 1856
Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?
A. Surely, surely.
Q. Did you have any knowledge when you bought this land that the United States claimed it?
A. No, sir.
Q. Did you have any knowledge that anyone disputed the title of the land company to it?
A. No, sir; I thought the company had a right to sell it, so I bought it from the company. 1857
Q. You have known this land as belonging to the land company for a long time?
A. Yes, sir; since I lived up here; that is what they all say.
620 Q. How long have you lived up here?
A. Twelve years.
Q. How long have you occupied and cultivated this land?
A. When I bought it three years ago this summer; I cultivated some of it before I bought it, two years before, or three, I'm not 1858 sure.
Q. And you have cultivated it ever since?
A. Ever since.
Q. When you cultivated it first, it was not in the market; they had not offered it for sale?
A. No, sir.
Q. But when you first cultivated it, you intended to purchase it?
A. Yes, sir.
Q. And as soon as it came into market, you did buy it?
A. I tried all I could to buy it, but I couldn't right off; but by 1859 and by I did buy it.

Q. What kind of improvements have you on this land?
A. About ninety acres broken.
Q. Any other improvements?
A. Just broke.
Q. About ninety acres broken and plowed up, all plowed up ready for next spring's crop?
1860 A. Yes, sir; except about twenty acres what ain't plowed yet.
Q. What are those improvements worth?
A. About $250 for the breaking.
Q. You have been cultivating this since '87?
A. Yes, sir.
621 Q. How long have you paid the taxes on this land?
A. Three years.
Q. How much money have you paid out for taxes?
1861 A. I'm not sure without consulting receipts; about $20 a year, or about $65 altogether, and road taxes what I worked out, and that is about $12.
Q. About $80 for taxes?
A. Pretty near $80.
Q. What do you consider this land worth now with the improvements?
A. Pretty near $2,185.
Q. You wouldn't sell it for that?
A. I wouldn't sell it at all now.
Q. You bought that for your home?
A. For my own and my children's home.
1862 Q. You expect to live there?
A. Yes, sir.
Q. When you gave those figures you meant what the land was worth?
A. I wouldn't sell it, but if I should have to sell it I would take what I could get for it. I don't want to sell it.
Q. You bought that for a home for yourself and children?
A. Yes.
1863 Q. Were papers served on you last fall by the U. S. marshal?
A. Yes.
Q. Did he leave word for you to come and see any particular lawyer?
A. He left word there; yes.
622 Q. Who did he say to see?
A. I was not at home, but he left the paper with the woman, and he said before we go to Mankato we would get a card from Sleepy Eye—we would get a card, and we should see Somerville; but I never got a card.
1864 Q. But did the U. S. marshal leave word to come and see Somerville?
A. He told my wife.
Q. Somerville is a lawyer here?
A. I heard so.
Q. Did you go to see him?
A. I didn't go to see him; I didn't want to have anything to do with lawyers; I didn't want to pay any money to the lawyers to

protest that land again for me. I bought it of the land company, and I thought that enough what I paid them.

Q. You never wanted the U. S. Government to commence suit 1865
for this land, did you?

A. No.

Q. You wanted to buy it of the land company?

A. Yes, sir.

Witness Yackel dismissed and WILLIAM GEOHRING sworn.

Mr. LAMBERTON:

Q. What is your name?

A. William Geohring. 1866

Q. How old are you?

A. Fifty-eight.

Q. Are you a married man?

A. Yes, sir.

623 Q. Have you a family?

A. Yes, sir.

Q. Are you a citizen of the United States?

A. Yes, sir.

Q. Are you one of the defendants in this suit?

A. No; no papers served on me. 1867

Q. The U. S. marshal didn't leave any papers for you?

A. No, sir.

Q. Did you know anything about this suit before you were asked to come here?

A. No; only what I heard from the neighbors last fall.

Q. You never had any papers served on you?

A. No.

Q. You didn't know that you were interested in this suit? 1868

A. No.

Q. Did you purchase the W. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of S. 35, T. 109, R. 36, of the land company?

A. Yes, sir.

Q. When did you purchase it?

A. In March, 1890.

Q. What did you pay for it?

A. $1,000.

Q. Eighty acres?

A. Yes, sir. 1869

Q. Did you purchase this land in good faith, believing that you were purchasing an absolute title in fee simple thereto?

A. Yes.

624 Q. When you purchased this land, did you have any knowledge that the United States claimed to own it, or claimed to have any interest in it?

A. Well, no.

Q. Did you have any knowledge that any one disputed the title 1870
of the land company to it.

A. No; no, sir, not at the time.

Q. You have known this land for a long time as belonging to the land company?

A. Before, I thought there was a dispute about it, but I thought now it was all right.

Q. How long have you occupied and cultivated this land?

A. Some of it since 1885.

Q. That was before you purchased it?

A. Yes.

1871 Q. When you commenced to work it, it was not on the market?

A. No.

Q. You commenced to work it with the intention of buying it of the land company?

A. I didn't know who it belonged to; I knew it was kind of mixed up.

Q. You never thought it belonged to the Government?

A. No, sir.

Q. The only trouble was between the land company and the rail-

1872 road company?

A. Yes, sir.

Q. And you intended to purchase it of who owned it?

A. Yes, sir.

625 Q. When the land was offered for sale you purchased it?

A. Yes.

Q. What improvements have you placed on this land?

1873 A. Nothing in particular, only broke it up, all but about twenty acres.

Q. How much are the improvements worth on that eighty?

A. Between $180 and $200.

Q. Since '85 you have cultivated this?

A. Yes, sir.

Q. How long have you paid the taxes on the land?

A. Since '90.

Q. How much money have you paid as taxes?

1874 A. About $30 in all.

Q. What do you consider the land, together with the improvements, worth?

A. I don't know; I wouldn't like to part with it.

Q. You don't want to sell it?

A. No, sir.

Q. What do you think it is worth?

A. It ought to be worth about twice as much as I paid for it—about $2,000.

Q. You wouldn't sell it at all, then?

1875 A. I wouldn't like to.

Q. You bought it as a home?

A. Yes, sir.

Q. Part of the home farm, is it not?

A. Yes, sir.

626 Q. You never wanted the Government to commence suit for this land?

A. No.

Q. You wanted to purchase this land from the land company?
A. Yes.
Q. And there wasn't any paper left at your house by the Government officer?
A. Not as I know of.

The defendants, The Winona & St. Peter Railroad Company, The Minnesota Land and Investment Company, The Winona & St. Peter Land Company, and all other defendants represented by James A. Tawney and H. M. Lamberton, offered in evidence in their behalf copies, duly certified by the Commissioner of the General Land Office, of, 1st, letter of Hon. John Lind to the Commissioner of the General Land Office; 2nd, petition accompanying said letter, except the affidavits therein referred to; 3rd, letter of S. M. Stockslager, Acting Commissioner, to the Secretary of the Interior, dated January 10th, 1888; 4th, letter of Hon. Jno. W. Noble, Secretary, to the Commissioner of the General Land Office, dated January 23rd, 1890; each of which was received in evidence subject to the objection that the same were incompetent, irrelevant, and immaterial; and the petition above named was also received subject to the particular objection that the whole thereof was not introduced, the affidavits therein referred to and forming a part thereof not being offered therewith.

627 To the Hon. COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: I have the honor to transmit herewith a petition of settlers in this and adjoining counties asking you to recommend and the Interior Department to direct the institution of suits by the Government to cancel the erroneous certificates heretofore issued to The Winona and St. Peter and St. Paul and Sioux City Railroad Company for the lands embraced in the list.

All of these lands are occupied or improved by settlers, many of whom have resided nearly a quarter of a century on the lands they claim. They are now threatened by ejectment suits; some have been brought by the companies, and unless the Government takes hold of the matter, in behalf of the settlers, I fear they will be unable to defend their homes and protect their interests against the power and resources of these corporations.

It will be observed that all the tracts, except a few at the bottom of the list, were covered by valid and subsisting homestead entries at the time of the attachment of The Winona and St. Peter Railroad Company's right to the lands in the townships named; that they are all within the granted limits of The Winona and St. Peter Railroad Company, and outside the granted limits of The St. Paul and Sioux City Railroad Company; hence, under the decision of the Supreme Court of the United States in St. Paul and Sioux City Railroad Company vs. Winona and St. Peter Railroad Company, 112 U. S., 720, The St. Paul and Sioux City Railroad Company can have no claim to them; and the claim of that company has been set aside as against The Winona and St. Peter Railroad Company.

628 It may be suggested that the original act granting lands to The Winona and St. Peter (transit) Railroad Company, 11 U. S. Statutes, 195, does not except homesteads from the donation, but it will be borne in mind that the homestead act did not become a law until later; the act does, however, provide, "but in
1882 case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of preemption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to such lands as the
1883 United States have sold or otherwise appropriated, or to which the rights of preemption have attached as aforesaid; which lands (thus selected in lieu of those sold, and to which preemption rights have attached as aforesaid, together with the sections designated by odd numbers as aforesaid and appropriated as aforesaid) shall be held by the Territory or future State of Minnesota for the use and purpose aforesaid."

Entries of public lands by way of homestead on payment of fee and commission did thereafter, and before the location of the route
1884 of that company, become an established statutory method by which the Government sold and disposed of its public lands; and that method of disposal was clearly covered and protected by the
629 language of the act, as is well said by Justice Field in construing this act in the case of The Winona and St. Peter Railroad Company vs. Barney, 113 U. S., 618: "The acts of Congress in effect said, 'We give to the State certain lands to aid in the construction of railroads lying along their respective routes, provided they are not already disposed of or the rights of settlers
1885 under the laws of the United States have not already attached to them, or they may not be disposed of or such rights may not have attached when the routes are finally determined if, at the time, it be found that, of the lands designated, any have been disposed of, or rights of settlers have attached to them, other equivalent lands may be selected in their place within certain prescribed limits.'" The words "otherwise appropriated," as employed in the statute, and "disposed of," in the decision referred to, were evidently intended to cover every legal method for disposing of the public lands, and
1886 I think there can be no question but what the courts will so hold when the matter is brought before them.

As to the even numbered sections included in the petition it will be found on examination that there was absolutely no warrant or authority in law for certifying them to the railroad company, for the company had no title nor claim to the lands that it purported to relinquish in lieu of them, there are several thousand acres more in the same condition, which I shall take the liberty to call your attention later.

In view of these facts and the disposition shown by the Department to protect the settlers, and confine the railroad companies to their just and legal claims, I feel confident that you will grant the request of these petitioners, and hope that the suits be ordered brought at as early a date as the business of the Department permits.

And allow me further to suggest that I shall be pleased at all times to render any assistance in my power in the way of procuring the evidence required or otherwise.

Very respectfully, your obedient servant,

JOHN LIND,
M. C. 50th Cong., 2nd Dist. Minn.

Dated July 11th, 1887.

To the Hon. COMMISSIONER OF THE GENERAL LAND OFFICE and the Hon. SECRETARY OF THE INTERIOR:

We, the undersigned settlers and occupants of the lands hereinafter more particularly described, do hereby respectfully petition you to recommend and direct that suit be brought in the name of the U. S. to set aside and vacate the erroneous certificates which have been inadvertently issued to the Winona & St. Peter Railroad Company, for said lands as well as certifications to any other company, so that we may be able to enter the same as Government land.

All of us have improvements on the lands claimed by us respectively, and many of us have resided on our claims for nearly a quarter of a century, and will be deprived of our homes unless you take action in our behalf and afford us an opportunity to assert our rights in the courts of the U. S.

We attach hereto and submit herewith a list of the lands in which we are interested, with affidavits showing the improvements on the several tracts claimed by each of us.

Dated this 19th day of March, 1887.

Land claimed.	Sec.	Tp.	R.	Name.
SW. ¼	1	108	32	Charles A. Davis.
N. ½ of NE.	3	108	32	George Lent.
S. ½ NE.	"	"	"	William Rossbach.
E. ½ NE.	5	"	"	George L. Luft.
E. ½ NW.	5	"	"	
SW. ¼	5	"	33	Anton Fischer.
S. ½ of NE.	5	"	"	Anton J. Fischer.
S. ½ " NW.	5	"	"	Anton J. Fischer.
SE. ¼	21	109	32	Terry Crumlet.
S. ½ NW. ¼	27	"	"	Addison Lent.
N. ½ NW. ¼ SW. ¼	27	"	"	Adam Schlagl.
W. ½ SE. & E. ½ of SW. ¼	35	"	"	
W. ½ of NW. ¼	"	"	"	John Nowak.
SW. of SW. ¼	"	"	"	Wenzl Reminger.
NE. ¼	35	"	"	Xavier Seidl.
NW. of NW. ¼	29	"	"	
SW. ¼	5	"	33	Andrew Larson.
SE. ¼	"	"	33	Giseur Larson.
S. ½ NE. ¼	5	109	33	Tom Dasvan.
S. ½ NW. ¼	"	"	"	
N. ½ SE. ¼	3	"	"	Henry Dohrmann.
S. ½ SE. ¼	"	"	"	Friedrick Hormann.
W. ½ NE.	"	"	"	Otto Mielke.
E. ½ NE.	9	"	"	Otto Mielke.
NW.	9	"	"	Fr. Mielke.
W. ½ SE.	9	"	"	Richard Mielke.

	Land claimed.	Sec.	Tp.	R.	Name.
	E. ½ SW	9	109	33	Otto Mielke.
	W. ½ SW	9	"	"	
	NE. ¼	11	"	"	Wilhelm Straburg.
	N. ½ NW. ¼	11	"	"	Freidrick Alwin.
	SE. of SW. & SW. of SE	15	"	"	Occupied by settlers.
	E. ½ SE	"	"	"	" " "
1896	SE. ¼	19	"	"	Ole A. Thompson.
	W. ½ NE. ¼	21	"	"	Julius Weber.
	E. ½ NW. & SW. of NW	19	"	"	Didrik Lausen.
	SW. ¼ & NW. ¼ NW. of NW	23	"	"	Charles Schneider.
	SE. ¼	25	"	"	James Keegan.
	SW. ¼	"	"	"	Ludvig Larson.
	NE. ¼	"	"	"	George Ebilsisor.
1897	NW. ¼	"	"	"	John McDermott.
633	NW. ¼	29	109	33	Peter Peterson, jr.
	SW. ¼	"	"	"	Michael Sturm.
	W. ½ NE. & W. ½ of SE	33	"	"	M. J. Toomey.
	E. ½ of NE. ¼	"	"	"	Frank Schiltz.
	NE. ¼	35	"	"	Thomas Anderson.
	W. ½ SE. & E. ½ SW	23	109	34	Amaziah Slocum.
1898	SW. ¼	31	109	32	Andreas Grobner.
	E. ½ NE. ¼	33	109	33	G. W. Harrington.
	S. ½ NW. ¼	35	"	"	Malcon C. Smith.
	N. ½ NW. ¼	"	"	"	David H. Jenkins.
	SE. ¼ NW. ¼	11	109	33	Ludwig Remus.
	SW. ¼	3	109	33	Consinat Trebeth.
	NW. ¼	1	108	32	R. Michael Schroepfer.
1899	W. ½ NE. ¼	1	108	32	Georg Perktt.
	W. ½ NW. ¼	5	108	33	Wolfang Brindl.
	W. ½ SW. ¼	"	"	"	Joseph Howik.
	NE. ¼	21	109	35	W. F. Hier.
	SE. ¼	21	109	35	Thomas W. Brophy.
	E. ½ NE. ¼	25	108	38	Carolius Peterson.
	W. ½ NE. ¼ & W. ½ SE. ¼	25	108	38	Anthon M. Peterson.
1900 634	W. ½ NE. ¼, NW. ¼ SE. ¼, & lot 3 of	31	109	33	Occupied by settlers.
	NW. ¼	35	109	36	Richard Fischer.
	SW. ¼	35	109	36	Caroline Wagner, as sole heir of Jacob F. Barbier, deceased.
	NE. ¼	27	109	36	John Doster.
1901	NW. ¼	27	109	36	Lorenz Ammann.
	SW. ¼	27	109	36	John Victor.
	SE. ¼	21	109	36	Julius F. Kirschstein.
	SE. ¼	27	109	36	John Stamm.
	NE. ¼	29	109	36	August Queuse.
	W. ½ SE. ¼ & E. ½ SW. ¼	23	109	34	John C. Rudolph.
	NE. ¼	25	108	38	Settler occupying.
1902	SE. ¼	5	111	32	" "
	SE. ¼	5	108	35	" "
	N. ½	2	108	36	" "
	Also lands in	4 & 8	107	38	" "

635 R. A. F. R. W.
W. J. D.

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1903 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 10, 1888.

The Hon. SECRETARY DEPARTMENT OF THE INTERIOR.

SIR: At the request of the Hon. John Lind, and petition of numerous settlers in Minn., enclosed in his letter of July 11, 1887, I have the honor to forward herewith a list of lands, marked Exhibit A, which appear to come under the first section of the act approved March 3, 1887 (24 Stat., 556). These lands have been certified to the State of Minn. for the benefit of R. Rds. built in
1904 that State under the grant approved March 3, 1857 (11 Stat., 195).

I also forward, in accordance with the request of Mr. Lind dated Dec. 6, 1887, a list, marked Exhibit B, of lands in even-numbered sections certified to State of Minn. for the benefit of the Winona and St. Peter R. R. in lieu of lands relinquished by said road under act of June 22, 1874.

Mr. Lind requests that suit be instituted to vacate the titles of the company to said lands on the ground that the said R. R. Co. had no claim to the lands which they "pretended to relinquish." The status of each tract is fully set forth in the respective exhibits, and 1905
the following is a schedule of the papers transmitted:

No. 1, Exhibit A.

No. 2, Exhibit B.

636 No. 3, petition of settlers and letter of Hon. John Lind, dated July 11, 1887.

No. 4, letter of Hon. John Lind, dated Dec. 6, 1887, in case of Thomas McOuatt (last page Ex. A).

No. 6, letter of Hon. John Lind, dated Dec. 6, 1887, in regard to lands under act June 22, 1874.

Very respectfully, 1906

S. M. Stockslager,
Acting Commissioner.

Department of the Interior,
5626–1888. *Washington, January 23, 1890.*

In re St. P. & S. C. R. R. Co.

Indemnity land.

The Commissioner of the General Land Office. 1907

Sir: By letter of January 10, 1888, your office transmitted two lists of lands stated to have been erroneously certified to the State of Minnesota for the benefit of the Winona & St. Peter and the St. Paul & Sioux City Railroad companies, under the grants of lands to that State, for railroad purposes, made by the act of March 3, 1857 (11 Stat., 195), and supplements.

List A, contained in said letter, was of the odd-numbered sections which had been selected and certified as indemnity lands. 1908

On Feb. 21, 1888, your office was instructed to lay a rule upon said companies to show cause why proceedings should not be taken in accordance with the provisions of the adjustment act of
637 March 3, 1887 (24 Stat., 557), to secure the restoration of said lands to the Government and to report the showing made, together with the opinion of your office thereon, to this Department (6 L. D., 544).

By letter of June 22, 1888, your office made report upon the showing made by the St. Paul and Sioux City Company as to lands 1909
described in List A.

From said report and the answer of the company, it appears that the only land received by it from the State of Minnesota which is embraced in said list is the undivided half of the W. ½ and the W. ½ of the NE. ¼ of sec. 1, T. 108, R. 32 W.

It appears that said tracts were beyond the six miles granted limits, and within the common fifteen miles or indemnity limits of both the Winona & St. Peter and the St. Paul & Sioux City rail-
1910 roads under the grant made by the act of 1857, supra, but fell within the ten-mile limits of the enlarged grant made to the State for the benefit of the Winona & St. Peter road by the act of March 3, 1865 (13 Stat., 526); that at the time of the definite location of the Winona & St. Peter road opposite said tracts they were covered by homestead entries, whereby they were excepted from said grant; that, subsequently, said entries were canceled, and thereafter the lands were selected and conveyed to the St. Paul & Sioux City road as indemnity for lands lost in place.

1911 On this state of facts your office was of the opinion that the showing made by the company, as to the particular tracts, was satisfactory, and the rule, so far as applicable thereto, should be dismissed, and so recommended.

638 In the case of Allers v. Northern Pacific Railroad Company (9 L. D., 452), it was decided by this Department, in effect, that it was competent for one railroad company to select within its proper limits, as indemnity land, part of a designated odd-numbered section located within the primary limits of a grant to
1912 another road, which tract, though purporting to have been granted thereto, was in fact excepted from the grant at the date of definite location of its line, and thereafter became and was vacant public land at the date of its selection for indemnity purposes.

In view of this decision, your recommendation is adopted and the rule is discharged as to the particular tract.

Herewith are returned the papers transmitted.

Very respectfully,

JOHN W. NOBLE,
1913 *Secretary.*

G. C.

WILSON C. BROWN, recalled on the behalf of the defendants represented by Thos. Wilson, J. A. Tawney, and H. M. Lamberton, testified as follows:

Examined by Mr. THOMAS WILSON:

Q. Mr. Brown, please look at this statement of taxes paid for
1914 the year 1892, and prior years, by the Winona & St. Peter Land Company on the lands involved in this suit, and marked Defendant's Exhibit P, and state whether you have examined it so that you can state whether that correctly sets forth the amount of
639 taxes paid, the years for which such taxes were paid, and the subdivisions or tracts on which such taxes were paid.

A. Yes, sir; it does correctly show the amount of taxes paid for the years therein stated on each subdivision of the lands involved in suit.

1915 Mr. EVANS. By whom?

WITNESS. A. H. Barney and the Winona & St. Peter Land Company—paid by the Winona & St. Peter Land Company.

(Complainant objects to question and answer as incompetent, immaterial, and irrelevant.)

Q. Mr. Brown, have you the form of deeds used under and in pursuance of the decree of the court in the case of Barney and his associates against the Winona & St. Peter Railroad Company?

A. Yes, sir. 1916

Q. Please exhibit it to me.

[Witness produces the deed.]

Q. Look at this which I present to you, and state whether that is the form of such deed in all cases, except so far as the description of the lands are concerned.

(Objected to as incompetent, immaterial, and irrelevant.)

A. It is.

(Offered in evidence, and marked Defendants' Exhibit P. 1917

Objected to as immaterial, incompetent, and irrelevant.)

Q. Mr. Brown, have you a form of the deed that was
640 used in conveying lands in pursuance of the request of Barney and his associates, prior to any decree made in the Barney suit above referred to?

A. Yes, sir.

Q. Look at this paper here presented, and state whether that is one of those deeds—an original.

A. It is; yes, sir; an original. 1918

Q. Was that form used in those cases, except the name of the grantee and the description of the tracts?

A. And possibly some reservations——

Q. And possibly some reservations outside of the right of way of the railroad company?

A. Yes, sir.

Q. This deed that you are looking at was in fact the conveyance of the lands involved in this suit, was it not?

A. Yes, sir; embraced one part of the tract.

(Objected to as incompetent, immaterial, and irrelevant.) 1919

Q. But you state that this was the form used prior to the deed made in pursuance of the decree?

(Objected to as incompetent, immaterial, and irrelevant.)

A. Yes, sir.

(Original deed offered in evidence, and marked Defendants' Exhibit R.

Objected to as incompetent, immaterial, and irrelevant.

It is stipulated by and between respective counsel that a copy 1920
of said deed may be and hereby is filed instead of and shall take the place of the original, subject to the same objections, heretofore made.)

Q. Mr. Brown, do you know who it was that negotiated
641 the sale of the tract of land in question in this suit which was conveyed to the Minnesota Land & Investment Company on the part of the Winona Land Company?

A. Yes, sir.

Q. Who was it?

A. Mr. Lamberton and myself, or myself under the direction of 1921
Mr. Lamberton.

Q. You, under the direction of Mr. Lamberton?
A. Yes, sir.
Q. You have before stated that the sale was made for cash?
A. Yes, sir.
Q. Six hundred dollars?
A. Yes, sir; $600.
Q. Who negotiated that sale on the part of the investment company?
1922 (Objected to as incompetent, immaterial, and irrelevant.)
A. E. F. Drake.
Q. Has E. F. Drake departed this life, or had he before the commencement of this suit?
(Objected to as incompetent, immaterial, and irrelevant.)
A. Yes, sir; to the best of my recollection, before this suit was commenced.
Q. At the time that this transaction took place, had you any notice, knowledge, or intimation that there was any adverse claim
1923 to or any question of the title to those lands in the Winona & St. Peter Railroad Company?
(Objected to as incompetent, immaterial, and irrelevant.)
A. No, sir.
642 Q. So far as you know, had Mr. Drake any notice, knowledge, or intimation?
(Objected to as incompetent, immaterial, and irrelevant.)
A. Not to my knowledge.
1924 Q. Was that sale to the Minnesota Land & Investment Company made for the full value of the land at the time it was made?
(Objected to as incompetent, immaterial, and irrelevant.)
A. Yes, sir; as we believed it.
Q. Do you know what the fact is, and if you do, what it is as to this: Was the line of the railroad of the Winona & St. Peter Railroad Company, or of the St. Paul & Sioux City Company, built on the very line on which the limits were fixed and the lands
1925 certified, or did the line of construction often vary a number of miles from the line of definite location?
(Objected to as incompetent, immaterial, and irrelevant.)
A. They varied.
Q. The constructed line varied to some extent from the line of definite location?
A. Yes, sir.
Q. Was that variation in some cases several miles?
(Objected to as incompetent, immaterial, and irrelevant.)
1926 A. Yes, sir.
Q. You have given the taxes paid on these lands; will you please state whether there were any, or whether many suits were begun and carried on to compel the payment of taxes on those lands?
643 (Objected to as incompetent, immaterial, and irrelevant.)
A. Yes, sir; there have been quite a large number of suits at different times.
Q. Running through how many years?

(Objected to as incompetent, immaterial, and irrelevant.) 1927

A. Near twenty years—full twenty years—since the first suits were instituted.

Q. Then, as a matter of fact, many of these taxes were paid by decree of the court after trial?

(Objected to as incompetent, immaterial, and irrelevant.)

A. Yes, sir; a large amount of them—I would say the bulk of them—on the lands in suit, as result of litigation.

Q. You know Thomas McOuatt?

A. Yes, sir. 1928

Q. I mean the man who is named as plaintiff in the equity suit and defendant in the law suit—whose records we have offered in evidence here—do you know he is the same man?

A. I do; yes, sir.

Q. Is he claiming any of the lands in question involved in this suit?

(Objected to as incompetent, immaterial, and irrelevant.)

A. Yes, sir.

Q. There is another McOuatt claiming one subdivision; do you 1929 know whether that person is any relative of his?

(Objected to as incompetent, immaterial, and irrelevant.)

644 A. She is a daughter of Thomas McOuatt.

Q. The land involved in the suit, the record of which we have introduced in evidence, is a part of these lands here, is it not?

(Objected to as incompetent, immaterial, and irrelevant.) 1930

A. It is.

Q. That which his daughter claims, where does that lie, contiguous to the piece claimed by her father?

A. I don't know.

Q. You may state whether the station grounds and depot house of the Winona & St. Peter Railroad Company are, in fact, on those tracts of land, or either of them.

(Objected to as incompetent, immaterial, and irrelevant.)

A. Yes; the station building and pump house are situated upon 1931 the southwest quarter of section 29, township 110, range 27, being the land now claimed by Jane McOuatt, and the same land included in the proceeding of the case of Barney vs. Thomas McOuatt.

Q. Are there any side tracks or yard tracks, or any other structures besides those you have mentioned, there?

(Objected to as incompetent, immaterial, and irrelevant.)

A. Yes, sir; there are side tracks and grain warehouses—I think two of them. 1932

Q. How long has that depot building been there, and those station grounds there on those lands?

(Objected to as incompetent, immaterial, and irrelevant.)

645 A. I think the ground has been so occupied some twenty years.

Q. In what way?

A. For station purposes; and I would say, in addition, there is a dwelling house occupied and used by the station agent. 1933

Q. But a part of the company's buildings?

A. Yes, sir.

Q. Was Thomas McOuatt part of the time station agent there?

(Objected to as incompetent, immaterial, and irrelevant.)

A. Yes, sir; quite a number of years.

Q. You say you think this has been occupied for twenty years?

1934 A. Yes, sir; for station purposes.

Q. Have you been acquainted with that ground and that place for that time, and is the remark, "I think" applicable to the exact number of years?

(Objected to as incompetent, immaterial, and irrelevant.)

A. I have been acquainted with it for nearly a quarter of a century.

Q. And, according to your best recollection, it has been occupied for twenty years?

A. Yes, sir.

1935 Q. This daughter of McOuatt's, has she been an employee of the railroad company in that station?

(Objected to as incompetent, immaterial, and irrelevant.)

A. Yes, sir.

646 Q. State whether she has lived part of the time in that house occupied by the company there for the employees.

A. Not to my knowledge; I couldn't say as to that.

1936 Q. But she has been an employee?

(Objected to as incompetent, immaterial, and irrelevant.)

A. Yes, sir; for a number of years.

Q. For the railroad company?

A. Yes, sir.

Q. Mr. Witness, please look at this roll, which I here offer you, and state what it is.

A. It is an exhibit showing the lands involved in the present proceeding which have been sold to the Winona and St. Peter Land Company, with the date of sale, consideration, amount of principal

1937 and interest paid respectively, date of such payment, the total amount of such principal and interest, to whom conveyed, where deeds have been issued, and the date of such conveyances.

Q. Have you made this exhibit, and have you such knowledge of the business of the company as to know that it is accurate and correct?

A. Yes, sir; it is accurate and correct.

(Exhibit offered in evidence and marked Defendants' Exhibit S.

1938 Complainant objects as incompetent, immaterial and irrelevant.)

Cross-examination by Mr. EVANS:

Q. Mr. Brown, in speaking about the lands claimed by

647 McGouatt, the railroad company only occupies its right of way through those lands, does it not?

A. Yes, sir; that is all, just the right of way, some several hundred feet in width.

Q. How wide is the right of way occupied by the railroad company?

1939 A. It varies.

Q. Through those lands, I mean.

A. I think they have a hundred feet from the center line on the north side, and seventy-five feet on south side.

Q. And the buildings that you speak of are situated upon that right of way, the side tracks, etc.?

A. Yes, sir.

Q. I call your attention to Exhibit R. Is it not a fact that all the lands described in that exhibit as having been sold were sold under contract, except in such cases as the exhibit shows that the 1940
entire consideration was paid in cash at the time of the sale?

A. Yes, sir.

Q. And except in such cases, and except where the exhibit shows that deeds have been given since, those lands are still held under contract?

A. There may have been some tracts deeded since that exhibit.

Q. Since the time that exhibit was made?

A. Yes, sir.

Redirect examination by Mr. WILSON:

Q. Mr. Witness, as to these McOuatt lands that you have been 1941
asked about on cross-examination outside of what is actually occupied by the Winona & St. Peter Railroad Company for rail-
648 road purposes—the company had long since sold and conveyed some of these lands, or all of them, had they not, to other persons?

(Objected to as incompetent, immaterial, and irrelevant.)

A. Well, I presume—— 1942

Q. Well, I am speaking of the McOuatt tract or tracts.

A. Yes, sir; the railroad company had conveyed this many years ago.

Q. About how many, do you think?

A. I think about twenty years ago.

Q. Twenty years ago, you think. Did the person to whom the railroad company conveyed go into possession, or the persons holding under him—were they occupying it and improving it openly and notoriously?

(Objected to as incompetent, irrelevant, and immaterial.) 1943

A. McOuatt was occupying it subsequently, the portion north of the tract outside of the right-of-way ground.

Q. Look at this deed which I here hand you, Mr. Brown. Have you seen that before?

A. Yes, sir; I prepared it.

Q. Who is the grantor in that deed?

(Objected to as incompetent, immaterial, and irrelevant.)

A. Thomas Ouatt and wife. 1944

Q. Is that the Thomas Ouatt that is now making this claim?

A. It is; yes, sir.

(Deed offered in evidence by defendants.

649 Objected to as incompetent, immaterial, and irrelevant.

Stipulated that an exact copy may be offered and stand in place of the original, subject to the same objections.

Deed marked Defendants' Exhibit .) 1945

CHARLES E. SIMMONS, recalled for defendants represented by Thos. Wilson, J. A. Tawney, and H. M. Lamberton, testifies as follows:

Examined by Mr. WILSON:

Q. Mr. Simmons, you have stated before that you have been for a long time the land commissioner of the Winona & St. Peter Railroad Company, have you not?

A. Yes, sir.

1946 Q. Do you remember the circumstances of the making of the deed, in pursuance of the decree in the Barney Case, by the Winona & St. Peter Railroad Company to the Winona & St. Peter Land Company?

A. I do.

Q. Do you also remember the circumstances antedating that deed which settled the form of the deed and the covenants in it?

A. I do.

Q. You may state those, if you please.

1947 (Objected to as immaterial, incompetent, and irrelevant.)

A. Subsequent to the final decision of the Supreme Court, the Winona & St. Peter Railroad Company prepared deeds of quit-claim conveying the lands in each county separately, the
650 lands embraced in the decree, making a separate deed for each county, and offered those deeds to the Winona & St. Peter Land Company. The Winona & St. Peter Land Company refused to receive the deeds and demanded that such deeds should contain covenants in the same form as the deeds that were executed
1948 pursuant to the contract prior to the commencement of the suit of Barney against the railroad company; their demand was refused by the railroad company, and application was made to the court—that is, to the United States circuit court—for a rule on the company to execute deeds containing such covenants; to that rule there was a return made, and the matter argued, and the court decided that the deed should not contain such covenants, but should contain simply covenants against the acts of the grantor; that they should be deeds of release simply, and with only such covenants.

1949 Q. Was that question argued at length before the court?

(Objected to as immaterial, incompetent, and irrelevant.)

A. It was.

Q. Was the deed made by the Winona & St. Peter Railroad Company to the land company, in exact accordance with the decision of the court, after that argument?

(Objected to as immaterial, incompetent, and irrelevant.)

1950 A. Deeds, one for each county, were made in accordance with the direction of the court in the proceedings to which I have referred.

Q. Were all the deeds made in pursuance of that decree in the Barney suit, so called, made to contain exactly the same covenants?

651 A. They were; that is, they were all of the same form, as to the form of grant and the covenants.

Q. The only difference being in the name of the grantee and the description of the property?

A. The only difference being in the description of the property, the grantees being the same.

Q. The grantee was the same?

A. Yes, sir.

Q. The circuit court of the United States in which that ruling was had was the same circuit court which rendered the decree in the Barney Case?

A. Yes, sir.

Q. I want to ask you whether all deeds made to the defendant land company, subsequent to or in pursuance of that decree, by the Winona & St. Peter Railway Company were made pursuant to the contract heretofore offered in evidence, and marked Exhibit D, attached to subdivision 14 of the stipulation of facts, and in part performance of and in liquidation of the liability of the railroad company to Barney and his associates under that contract?

(Objected to as immaterial, incompetent, and irrelevant.)

A. Yes.

Q. Was any consideration paid to the Winona & St. Peter Railroad Company for those deeds except the satisfaction of the contract?

(Objected to as immaterial, incompetent, and irrelevant.)

A. No.

Q. In case of the deeds made in pursuance of the request of Barney and his associates prior to the deeds made under that decree—how was it as to them?

652 (Objected to as immaterial, incompetent, and irrelevant.)

A. They were made upon the written request of Barney and his associates, pursuant to the terms of the contract, in part satisfaction of that contract, and for no other consideration.

Q. You mean, do you, Mr. Simmons, for no other consideration moving to the railroad company?

A. That is what I mean; yes, sir.

Q. You do not know what consideration the purchasers of those lands—that is, the grantees in those deeds—paid to Barney and his associates or to the land company, or do you?

(Objected to as immaterial, incompetent, and irrelevant.)

A. No; we have no knowledge of that other than the expressed consideration in the deeds.

No cross-examination.

H. W. LAMBERTON, recalled on the part of the defendants, testifies as follows:

Examined by Mr. WILSON:

Q. Did you know in his lifetime Danforth N. Barney?

A. I did.

Q. Did you know in his lifetime Ashbel H. Barney?

A. I did.

Q. And Jesse Hoyt?

A. I did; all of them.

Q. Did you know Wm. Lamb, of Winona?

A. I did.

653 Q. Was he, or was he not, for a certain length of time, the land commissioner for Barney and his associates?

A. Of the Winona & St. Peter Railroad Company.

Q. Up to what year?

1957 A. July, 1866.

Q. Is Mr. Lamb living or dead?

A. He is dead.

Q. Was he dead before this suit was begun?

A. He was.

Q. Are Ashbel H. Barney, Danforth Barney, or Jesse Hoyt living?

A. They are not.

Q. Had either of them died before this suit was begun?

A. I believe they had, all of them.

1958 Q. Who were the active men in charge of the Winona & St. Peter Railroad Company, and of the land matters, and of the whole business during the time that Barney and his associates were connected with it?

A. Ashbel H. Barney and Jesse Hoyt, and more particularly A. H. Barney; he was the executive officer in New York, as I understood.

Q. Did you hear the testimony of Mr. Simmons, just examined?

A. I did.

Q. He stated that as to the deeds made pursuant to the decree in the Barney Case, and as to the deeds theretofore made by the

1959 Winona & St. Peter Railroad Company at the instance and request of Barney and his associates, that no consideration was paid to the railroad company by the land company, or by the grantees

654 in those deeds, except in satisfaction of the contract, Exhibit D; I want to ask you, now, whether the person who purchased those lands and to whom they were deeded at the request of Barney and his associates paid any consideration, and to whom that consideration was paid?

1960 (Objected to as immaterial, incompetent, and irrelevant.)

A. The consideration was paid to me in Winona, or someone representing me there, at the Winona office.

Q. Whom were you acting for then?

A. Barney and his associates, and part of the time the Winona & St. Peter Railroad Company, in a double capacity; I received the money, as I understood, for Barney and his associates, and remitted to Mr. Barney.

1961 Q. Was a full consideration paid by the grantees of those lands for the lands?

(Objected to as immaterial, incompetent, and irrelevant, and also as repetition.)

A. They were.

Q. You made sales there at Winona?

A. Yes, sir.

Q. And those lands, as I understand, they were all sold for their full value, their full market value?

A. As I believed at the time.

Q. Were you the representative of Barney and his associates and acting for them at the time this decree in the Barney suit was made, 1962
to which reference has been made?

A. I was.

Q. Do you remember anything about the argument before
655 the circuit court, referred to by Mr. Simmons, the last witness, as to the form of the deed to which the land company was entitled?

A. I do.

Q. You have heard Mr. Simmons' testimony as to that?

A. Yes, sir. 1963

Q. Was the form of the deed settled by the circuit court?

(Objected to as immaterial, incompetent, and irrelevant.)

A. It was.

Q. After extensive argument?

A. Yes, sir.

Q. And was the deed which has since been given made in pursuance of and in accordance with the decision of the court in that argument?

(Objected to as immaterial, incompetent, and irrelevant.) 1964

A. Yes, sir; as I understood the decision of the court.

No cross-examination.

656 DEFENDANT'S EXHIBIT

Statement of taxes paid for 1892 and prior years by the Winona & St. Peter Land Company on lands involved in the suit of the U. S. vs. W. & St. P. R. R. Co. et al.

Parts of section.	Sec.	Tp.	R.	Amt. of taxes.	Years for which taxes were paid.
					1966
Und. ½ W. ½ of NE. ¼	1	108	32	$43.08	1875-6-7-8-9, 1880-1-2-3-4 and 5.
Und. ½ NW. ¼	"	"	"	86.70	1875-6-7-8-9, 1880-1-2-3-4 and 5.
Und. ½ SW. ¼	"	"	"	94.08	1875-6-7-8-9, 1880-1-2-3-4-5 and 6.
NW. ¼ of NE. ¼	3	"	"	40.20	1880-1-2-3-4-5-6-7 and 1888.
E. ½ of NE. ¼	"	"	"	114.10	1880-1-2-3-4-5-6-7-8-9, 1890-1, and 1892.
SW. ¼ of NE. ¼	"	"	"	40.21	1880-1-2-3-4-5-6-7 and 1888.
S. ½ of NE. ¼	5	"	"	80.26	1880-1-2-3-4-5-6-7 and 1888. 1967
E. ½ of NW. ¼	"	"	"	79.49	1880-1-2-3-4-5-6-7 and 1888.
SE. ¼	21	109	32	194.76	1880-1-2-3-4-5-6-7-8 and 1889.
N. ½ of NW. ¼	27	"	"	94.48	1880-1-2-3-4-5-6-7-8 and 1889.
SW. ¼ of NW. ¼	"	"	"	47.23	1880-1-2-3-4-5-6-7-8 and 1889.
SW. ¼	"	"	"	276.71	1880-1-2-3-4-5-6-7-8, 1889, 1890-1, and 1892.
SW. ¼	31	"	"	335.43	E. ½ 1880-1-2-3-4-5-6-7-8 and 1889. W. ½ 1880-1-2-3-4-5-6-7-8-9, 1890-1, and 1892. 1968
NE. ¼	35	109	32	236.82	1880-1-2-3-4-5-6-7-8 and 1889.
W. ½ of NW	"	"	"	152.66	1880-1-2-3-4-5-6-7-8-9, 1890, 1891, and 1892.
657 SW. ¼ of SW. ¼	35	109	32	53.43	1880-1-2-3-4-5-6-7 and 8.
N. ½ of SE. ¼	3	109	33	65.74	1875-6-7-8-9, 1880-1-2.
S. ½ of SE. ¼	"	"	"	92.64	1875-6-7-8-9, 1880-1-2-3-4 and 5.
N. ½ of SW. ¼	"	"	"	78.64	1875-6-7-8-9, 1880-1-2-3-4 and 5.
S. ½ of SW. ¼	"	"	"	45.95	1875-6-7-8-9, 1880, and 1881. 1969
E. ½ of SE. ¼	5	"	"	61.80	1875-6-7-8-9, 1880-1-2-3 and 4.
W. ½ of SE. ¼	"	"	"	49.47	1875-6-7-8-9, 1880, 1881, and 1882.
E. ½ of NE. ¼	9	"	"	11.86	1875, 1876, and 1877.
W. ½ of NE. ¼	"	"	"	32.32	1875-6-7-8-9, 1880.
E. ½ of NW. ¼	"	"	"	66.44	1875-6-7-8-9, 1880, 1-2-3-4 and 5. 1970
NW. ¼ of SE. ¼	"	"	"	29.80	1875-6-7-8-9, 1880-1-2-3 and 4.
W. ½ of NW. ¼	"	"	"	60.18	1875-6-7-8-9, 1880-1-2-3 and 4.
SW. ¼ of SE. ¼	"	"	"	35.98	1875-6-7-8-9, 1880-1-2-3-4-5 and 6.
E. ½ of SW. ¼	"	"	"	73.13	1875-6-7-8-9, 1880-1-2-3-4-5 and 6.
NW. ¼ of SW. ¼	9	109	33	26.00	1875-6-7-8-9, 1880-1-2 and 3. 1971
SW. ¼ of SW. ¼	"	"	"	37.13	1875-6-7-8-9, 1880-1-2-3-4-5 and 6.
E. ½ of NE. ¼	11	"	"	53.52	1875-8-9, 1880, 1881, 1882, and 1883.
W. ½ of NE. ¼	"	"	"	73.48	1877-8-9, 1880-1-2-3-4 and 1885.
658 N. ½ of NW. ¼	11	109	33	60.62	1877-8-9, 1880-1-2 and 1883.

		Parts of section.	Sec.	Tp.	R.	Amt. of taxes.	Years for which taxes are paid.
1972		SE. ¼ of NW. ¼	11	109	33	$40.61	1877-8-9, 1880-1-2-3-4-5 and 6.
		SW. ¼ of NW. ¼	"	"	"	37.56	1877-8-9, 1880-1-2-3-4 and 1885.
		NE. ¼ of NW. ¼	19	"	"	31.74	1875-6-7-8-9, 1880-1-2-3-4-5 and 6.
		NW. ¼ of NW. ¼	"	"	"	4.57	1875, 1876, and 1877.
		S. ½ of NW. ¼	"	"	"	106.06	1875-6-7-8-9, 1880-1-2-3-4-5-6-1887-8-9-1890 and 1891.
1973		W. ½ of SE. ¼	"	"	"	84.17	1875-6-7-8-9, 1880-1-2-3-4-5-6-7-8-9, 1890, 1891, and 1892.
		W. ½ of NE. ¼	24	"	"	33.92	1875-6-7-8-9, 188, and 1881.
		E. ½ of NE. ¼	25	"	"	115.55	1880-1-2-3-4-5-6-7-8-9, 1890, 1891, and 1892.
		E. ½ of NW. ¼	"	"	"	87.80	1880-1-2-3-4-5-6-7-8 and 1889.
1974		W. ½ of NW. ¼	25	109	33	79.13	1880-1-2-3-4-5-6-7-8 and 1889.
		SE. ¼	"	"	"	129.48	1880-1-2-3-4-5-6-7 and 1888.
		SW. ¼	"	"	"	204.07	1880-1-2-3-4-5-6-7-8-9, 1890, 1891 and 1892.
		NW. ¼	29	"	"	197.01	1877-8-9, 1880-1-2-3-4-5, 1886-7-8-9, and 1890.
		SW. ¼	"	"	"	189.99	1877-8-9, 1880-1-2-3-4-5, 1886-7-8 and 1889.
1975		W. ½ of NE. ¼	31	"	"	91.85	1877-8-9, 1880-1-2-3-4-5, 1886-7-8 and 1889.
	659	NW. ¼ of SE. ¼	31	109	33	43.95	1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, and 1889.
		Lot No. 3	"	"	"	41.55	1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, and 1889.
1976		NE. ¼	33	"	"	192.50	1880-1-2-3-4-5-6-7-8-9, 1890, 1891, and 1892.
		W. ½ of SE. ¼	"	"	"	73.05	1880-1-2-3-4-5-6-7-8, and 1889.
		NE. ¼	35	"	"	203.23	1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, and 1892.
		NW. ¼	"	"	"	205.47	1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, and 1892.
1977		S. ½ of NE. ¼	5	108	33	81.36	1880-1-2-3-4-5-6-7-8-9, 1890.
		S. ½ of NW. ¼	"	"	"	73.05	1880-1-2-3-4-5-6-7-8-9.
		W. ½ of SE. ¼	23	109	34	101.70	1875-6-7-8-9, 1880-1-2-3, 1884-5-6-7-8, and 1889.
		E. ½ of SW. ¼	"	"	"	109.56	1875-6-7-8-9, 1880-1-2-3, 1884-5-6-7-8, and 1889.
		NE. ¼	21	109	35	189.80	1880-1-2-3-4-5-6-7-8, and 1889.
1978		SE. ¼	"	"	"	208.54	1880-1-2-3-4-5-6-7-8-9, and 1890.
		SE. ¼	5	108	35	213.60	1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, and 1892.
		SE. ¼	21	109	36	217.55	1880-1-2-3-4-5-6-7-8-9, 1890, 1891, and 1892.
	660	NE. ¼	27	109	36	175.55	1880-1-2-3-4-5-6-7-8-9, and 1890.
1979		NW. ¼	"	"	"	160.08	1880-1-2-3-4-5-6-7-8, and 1889.
		SE. ¼	27	109	36	160.08	1880-1-2-3-4-5-6-7-8, and 1889.
		SW. ¼	"	"	"	176.04	1880-1-2-3-4-5-6-7-8-9, and 1890.
		NE. ¼	29	"	"	146.80	1880-1-2-3-4-5-6-7-8, and 1889.
		NW. ¼	35	"	"	164.28	1880-1-2-3-4-5-6-7-8, and 1889.
		SW. ¼	"	"	"	258.04	1880-1-2-3-4-5-6-7-8-9, 1890-1, and 1892.
1980		NW. ¼	29	110	27	340.16	1878-9, 1880-1-2-3-4-5-6-7-8-9, 1890-1 and 1892.
		(South of R. R.) SW. ¼	"	"	"	128.54	1880-1-2-3-4-5-6-7-8-9, 1890-1, and 1892.
		Total				$7,993.33	

661 DEFENDANT'S EXHIBIT .

Winona and St. Peter Railroad Company.

WARRANTY DEED.

1981 This indenture, made this fourth day of September, in the year of our Lord one thousand eight hundred and seventy-two, between the Winona and St. Peter Railroad Company, party of the first part, and Wilson C. Brown, of the county of Winona, and State of Minnesota, party of the second part: Witnesseth, that the said party of the first part, for and in consideration of the sum of eight hundred ($800) dollars, to it in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, and conveyed, and doth by these
1982 presents grant, bargain, sell, release, and convey unto the said party of the second part, his heirs and assigns forever, all that tract or parcel of land, situate, lying, and being in the county of Nicollet, in the State of Minnesota, known and described as follows, to-wit: The southwest quarter of section number twenty-nine (29), in township number one hundred and ten (110), north of range num-

ber twenty-seven (27) west, of the fifth principal meridian, Minnesota, containing, according to the United States Government survey thereof, one hundred and sixty (160) acres, saving and excepting therefrom a strip of land one hundred (100) feet in width, where the line of the said Winona and St. Peter Railroad crosses said 1983
premises, the same being part of the lands granted to the late Territory of Minnesota by act of Congress approved March 3d, 1857,
for the purpose of aiding in the construction of a railroad
662 from Winona, via St. Peter, to a point on the Big Sioux River south of the forty-fifth parallel of north latitude.

To have and to hold the same, together with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, unto the said party of the second part, his heirs 1984
and assigns forever. And the said party of the first part doth hereby, for itself and its successors, and each and every of them, covenant and agree to and with the said party of the second part, his heirs and assigns, in the manner and form following, that is to say: That the premises hereby conveyed are part and parcel of the lands granted by act of Congress to the State of Minnesota, and by said State to the said party of the first part; that the same are free and clear of and from all incumbrances and liens, made, done, committed, or executed by the said party of the first part; and 1985
the same in the quiet and peaceable possession of the said party of the second part, against all and every person or persons claiming by, through, or under it, the said party of the first part will forever warrant and defend.

In testimony whereof the said Winona and St. Peter Railroad Company hath hereunto caused its corporate seal to be affixed and these presents to be signed by its vice-president and attested by its secretary, the day and year above written.

WINONA AND ST. PETER RAILROAD COMPANY,
(Signed) By M. L. SYKES, 1986
Vice-President.

Attest:
(Signed) SAML. O. HOWE,
Secretary Winona and St. Peter Railroad Company.

663 Signed, sealed, and delivered in presence of

(Signed) E. W. DURYEE.
(Signed) CHARLES NETTLETON.

[Corporate seal.]

STATE OF NEW YORK,
City and County of New York, ss: 1987

Be it remembered, that on this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and seventy-three, before me, the subscriber, a commissioner in and for the State of New York, appointed by the governor of the State of Minnesota, to take the acknowledgment and proof of the execution of deeds and other instruments of writing, to be used or recorded

in the said State of Minnesota, personally came M. L. Sykes, jr.,
1988 and Samuel O. Howe, to me known to be the vice-president and secretary of The Winona and St. Peter Railroad Company, and acknowledged that they executed the foregoing deed as vice-president and secretary of said company, and caused the corporate seal of said company to be attached thereto, pursuant to the authority given by the board of directors of said company.

Witness my hand and official seal the day and year aforesaid.

(Signed) CHARLES NETTLETON,
Commissioner for Minnesota in New York.

1989 [Official seal.]

664 DEFENDANT'S EXHIBIT .

S. T. 10,452. No. 992.

This indenture, made this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and eighty-
1990 seven, between The Winona and St. Peter Railway Company, a corporation created, and existing under the laws of the State of Minnesota, party of the first part, and The Winona and St. Peter Land Company, a corporation organized under the laws of the State aforesaid, party of the second part: *Witnesseth*, that the said party of the first part for and in consideration of the sum of one dollar, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, has released, aliened and quitclaimed, and by these presents does release, alien
1991 and quitclaim unto the said party of the second part and to its successors and assigns forever, all the following described lots, pieces or parcels of land situated in the county of Brown and State of Minnesota, and known and described as follows, to wit: All of section three (3); the east half of the northeast quarter, the southwest quarter of the northeast quarter, the northwest quarter, the southeast quarter, and the east half of the southwest quarter of section five (5); the southeast quarter, and the west half of section seven (7); all of sections nine (9), seventeen (17), and nineteen
1992 (19); the north half of the northeast quarter, and the north half of the northwest quarter of section twenty-nine (29), all in township one hundred and eight (108) north, of range thirty-two (32) west of the fifth principal meridian; the southeast quarter and
665 the southeast quarter of the southwest quarter of section twenty-one (21); lot two (2) of section twenty-three (23); lots three (3), four (4), five (5), and the southwest quarter of the southwest quarter of section twenty-five (25); the southeast quarter of the northeast quarter, and the west half of section twenty-seven
1993 (27); the southwest quarter of section thirty-one (31); the north half, the east half of the southeast quarter, and the west half of the southwest quarter of section thirty-five (35); all in township one hundred and nine (109) north, of range thirty-two (32) west of the fifth principal meridian; all of section one (1); the northwest quarter and the south half of section three (3); all of sections five (5),

seven (7), nine (9), the north half, the north half of the southeast quarter, the northeast quarter of the southwest quarter, and the west half of the southwest quarter of section eleven (11); all of sections thirteen (13), fifteen (15), seventeen (17), nineteen (19), 1994
twenty-one (21), twenty-three (23), and twenty-five (25); the east half of the northeast quarter, the southwest quarter of the northeast quarter, the southeast quarter (SE. ¼), and the west half of section twenty-seven; all of sections twenty-nine (29), and thirty-one (31); the southwest quarter of the northwest quarter, the northwest quarter of the southeast quarter, the south half of the southeast quarter, and the southwest quarter of section thirty-three (33); the northeast quarter, the east half of the northwest quarter, the northwest quarter of the northwest quarter, the southwest quarter of the 1995
southeast quarter, the south half of the southwest quarter, and the northwest quarter of the southwest quarter of section thirty-
666 five (35), all in township one hundred and eight (108) north, of range thirty-three (33) west of the fifth principal meridian; the north half of the southeast quarter of section nineteen (19); all of section twenty-five; the east half of the southeast quarter of section twenty-seven (27); lots two (2), three (3), and the northwest quarter of the southeast quarter of section thirty-one 1996
(31); the northeast quarter, the west half of the southeast quarter and the southwest quarter of section thirty-three (33), and the north half of section thirty-five (35), all in township one hundred and nine (109) north, of range thirty-three (33) west of the fifth principal meridian; the south half of section one (1); the northeast quarter, the south half of the northwest quarter, and the south half of section three (3); all of sections five (5), and seven (7); the north half of the northeast quarter of section eight (8); all of sec- 1997
tion nine (9); the northeast quarter of the northeast quarter, the west half of the northeast quarter, the northwest quarter of the southeast quarter, the south half of the southeast quarter, and the west half of section thirteen (13); the east half, the east half of the northwest quarter, the east half of the southwest quarter, and the southwest quarter of the southwest quarter of section fifteen (15); the northwest quarter of the northeast quarter, the south half of the northeast quarter, the north half of the southeast quarter and the west half of section seventeen (17); all of section nineteen (19); the east half, the northwest quarter of the northwest quarter, the 1998
south half of the northwest quarter, and the southwest quarter of section twenty-one (21); all of sections twenty-three (23), twenty-
five (25), twenty-seven (27), twenty-nine (29), thirty-one
667 (31), thirty-three (33), and thirty-five (35), all in township one hundred and eight (108) north, of range thirty-four (34) west of the fifth principal meridian; all of sections three (3) and five (5); the east half, the southwest quarter, the east half of the northwest quarter, and the southwest quarter of the northwest 1999
quarter of section seven (7); all of section nine (9); the east half, the northwest quarter, and the north half of the southwest quarter of section fifteen (15); the north half, the east half of the southeast quarter, and the west half of the southwest quarter of section seven-

teen (17), excepting and reserving, however, all that part of the northeast quarter of said section seventeen (17) last above mentioned, described as being a strip of land one hundred (100) feet wide north of and one hundred (100) feet wide south of and contiguous to the centre line of The Winona and St. Peter Rail-
2000 road as now laid out and constructed across said northeast quarter, said strip commencing at a point in said center line eleven hundred (1,100) feet westerly, measured along said centre line from the east line of said northeast quarter, extending southwesterly along said centre line six hundred (600) feet; also a strip of land one hundred (100) feet wide north of and one hundred (100) feet wide south of and contiguous to said centre line, said strip commencing at a point in said centre line twenty-two hundred (2,200) feet southwesterly, measured along said center line from the east line of
2001 said northeast quarter, extending southwesterly along said centre line four hundred (400) feet; excepting and reserving also all that part of the northwest quarter of said section seventeen (17) last above mentioned, described as being a strip of land one
668 hundred (100) feet wide north of and one hundred (100) feet wide south of and contiguous to the centre line of The Winona and St. Peter Railroad as now laid out and constructed across said northwest quarter, said strip commencing at a point three thousand (3,000) feet southwesterly, measured along said
2002 center line from the east line of said section seventeen (17), extending southwesterly along said center line two hundred (200) feet; also excepting and reserving all that part of the southwest quarter of said section seventeen (17) last above mentioned, described as being a strip of land one hundred (100) feet wide north of and one hundred (100) feet wide south of and contiguous to the center line of The Winona and St. Peter Railroad as now laid out and constructed across said southwest quarter, said strip commencing at a point in said center line sixteen hundred (1,600) feet northeasterly, measured along said centre line from the west line of said
2003 southwest quarter, extending northeasterly along said centre line four hundred and fifty (450) feet.

All of sections twenty-one (21), twenty-seven (27), twenty-nine (29), thirty-one (31), and thirty-three (33), all in township one hundred and nine (109) north, of range thirty-four (34) west of the fifth principal meridian; the east half of section one (1); the east half and the northeast quarter of section five (5); all of sections seven (7), nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17), nineteen (19), twenty-one (21), twenty-three (23),
2004 twenty-five (25), twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three (33), and thirty-five, all in township one hundred and eight (108) north, of range thirty-five (35) west of the fifth principal meridian; the north half, the north half of the
669 southeast quarter, the southwest quarter of the southeast quarter, the north half of the southwest quarter, and the southwest quarter of the southwest quarter of section one (1); the north half, the southwest quarter, the north half of the southeast quarter, and the southeast quarter of the southeast quarter of sec-

tion three (3); all of sections five (5), seven (7), nine (9), eleven 2005
(11), thirteen (13), and fifteen (15); the south half, the south half of the northeast quarter, the northeast quarter of the northeast quarter, and the southwest quarter of the northwest quarter of section seventeen (17); the north half, the southwest quarter, the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section nineteen (19); all of section twenty-one (21); the north half and the southwest quarter of section twenty-three (23); the west half, the southeast quarter, the west half of the northeast quarter, and the northeast quarter of 2006
the northeast quarter of section twenty-seven (27), excepting and reserving, however, all that part of the southeast quarter of said section twenty-seven (27) last above mentioned, described as being a strip of land one hundred (100) feet wide north of and one hundred (100) feet wide south of and contiguous to the center line of the Winona and St. Peter Railroad as now laid out and constructed across said southeast quarter, said strip commencing on the east line of said southeast quarter (SE. ¼), extending southwesterly along said center line four hundred (400) feet; also a strip of land 2007
one hundred (100) feet wide north of and one hundred (100) feet wide south of and contiguous to the center line of the Winona
and St. Peter Railroad as now laid out and constructed
670 across said southeast quarter, said strip commencing at the point of intersection of said center line with the south line of said southeast quarter, and extending along said center line northeasterly a distance of eight hundred *feet* (800) feet; all of section twenty-nine (29); all of section thirty-one (31) (excepting and reserving that part of the northeast quarter (NE. ¼) of said 2008
section thirty-one (31) last mentioned, which lies north of a line one hundred (100) feet south of and parallel with the center line of the Winona and St. Peter Railroad as laid out and constructed across said land), all being in township one hundred and nine (109) north, of range thirty-five (35) west of the fifth principal meridian.

Reserving, however, unto the said Winona and St. Peter Railroad Company, its successors and assigns (if not hereinbefore reserved and specifically described) from the operation and effect 2009
of this conveyance, all that portion of the said lands above described (if any such there be) which lies within lines drawn on each sides of, parallel with, and fifty feet distant from the center line of the main track of the railroad of said company, party of the first part, as said railroad is now located and constructed in said county and State.

To have and to hold the said premises above described, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits 2010
thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or in
equity, of, in, and to the above-bargained premises, with the
671 hereditaments and appurtenances unto the said party of the second part, its successors and assigns forever.

This deed is made in obedience to final decree of the United States circuit court for the district of Minnesota in the case of
2011 A. H. Barney et al. vs. The Winona and St. Peter Railroad Company, entered at the December term, 1886, on Monday, March 7, 1887.

And the said party of the first part, for itself, its successors and assigns, does covenant with the said party of the second part, its successors and assigns, that it has not done, or caused to be done, any act or thing whatsoever whereby the above-described premises, or any part thereof, have been charged or incumbered, and that the title of the above-granted premises against all persons lawfully claiming the same from or under it the said party of the first part
2012 will forever warrant and defend.

In testimony whereof the said Winona and St. Peter Railroad Company hath caused its corporate seal to be affixed, and these presents to be signed by its president and attested by its secretary, the day and year first above written.

WINONA AND ST. PETER RAILROAD COMPANY,
By M. HUGHITT, *President.*

Attest:
[SEAL.] J. B. REDFIELD, *Secretary.*

Signed, sealed, and delivered in presence of—
2013 JOHN KING,
J. E. BUCKBEE.

Approved.

C. E. SIMMONS, D. D. B.,
Land Commissioner.

672 STATE OF ILLINOIS,
County of Cook, ss:

On this twenty-eighth day of November, A. D. 1887, before me appeared Marvin Hughitt, to me personally known, who, being
2014 by me duly sworn, did say that he is the president of the Winona and St. Peter Railroad Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said Marvin Hughitt acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and seal of office the day and year last above written.

[SEAL.] FRANK P. CRANDON,

Commissioner in and for the State of Illinois, appointed by the
2015 governor of the State of Minnesota, to take the acknowledgment of deeds and other instruments in writing to be used in said State of Minnesota.

(See original folios 673–676.)

St[a] & St. Peter Railroad Co., The Winona & St. [h]asers thereof.

	To whom deeded.	Date of deed.	Of which total amount the following was paid prior to June 15, 1891.	
2020				2023
Un	Minn. Land and Inv. Co	June 15, 1887	$600.00	
Un			540.39	
Un	George Pachtl	June 21, 1888	348.36	
NW	Wenzel Remiger	June 3, 1891	986.10	
SW			154.56	
SW			204.48	
SE			589.20	
SW	Terry Crumlett	May 10, 1893	1 258.50	
SW			130.70	
N.			284.65	
E.			402.15	
NE			563.60	
S. ½			218.25	
S. ½			303.03	
N.	Heinrich Dohmann	June 17, 1889	882.12	
S. ½	Friedrich W. Hormann	September 29, 1892	589.15	
N.			554.91	
S. ½	Ferdinand Trebesch	September 20, 1889	896.40	
E.	John W. Kolbe	January 7, 1886	700.00	
W.	Fritz Winkelmann	June 15, 1889	884.88	
E.	Bernard Blomeke	February 7, 1885	778.57	
W.	Fred Mielke	October 11, 1887	1,021.15	
E.			1,135.77	
W.			706.17	
2021 SW			664.94	2024
SW			325.65	
NW	Claus Meinert	May 12, 1892	414.72	
E.	William Strasberg	April 29, 1892	845.51	
W.			612.70	
N.			722.30	
SE			297.60	
SW	Karl Fast	December 6, 1887	490.50	
NW	Heinrich Kaehler	May 14, 1883	399.23	
NE			262.74	
S. ½				
W.	Theodor Weber	November 21, 1888	891.11	
E.			234.00	
W.			514.20	
N.			474.40	
S. ½			474.40	
NW				
E.			171.30	
W.			171.30	
W.			180.94	
NW			358.67	
W.			264.66	
W.			175.31	
E.	Hans Knudson	November 11, 1892		
W.			219.52	
2022 E.	Henry G. Beussmann	December 17, 1890	814.00	2025
SE				
E.			195.90	
W.			195.90	
E.			398.07	
W.			309.03	
N.			240.90	
S. ½			358.26	
SW			470.80	
NE			539.93	
E.	John Yaeger	September 3, 1891	512.33	
W.			396.20	
Pa	Thomas McOuat	October 31, 1893	2,607.25	

Statement of sales made by The Winona & St. Peter Land Co. of lands involved in the proceedings of the United States vs. The Winona & St. Peter Railroad Co., The Winona & St. Peter Land Co., and others, and showing the amounts of principal and interest paid by the respective purchasers thereof.

Subdivision.	Sec.	Towns'p.	Range.	Acres.	To whom sold.	Date of sale.	Consideration.	Payments made. Principal.	Payments made. Interest.	Date of payment.	Total amount paid.	To whom deeded.	Date of deed.	Of which total amount the following was paid prior to June 15, 1891.
Und. ½ of SW. ¼	1	108	32	80	Minn. Land & Invt. Co	June 15, 1887	$600	$600.00		July 13, 1887	$600.00	Minn. Land and Inv. Co	June 15, 1887	$600.00
Und. ½ of NW. ¼	1	108	32	89.59½	Michael Schrepfer	Feb. 1, 1886	632.42	482.42	$183.47	Feb. 3, 1886, to Feb. 2, 1893	665.89			540.39
Und. ½ of W. ½ of NE. ¼	1	108	32	40.40	George Pachtl	Feb. 1, 1886	303.00	303.00	45.36	Feb. 3, 1886, to June 21, 1888	348.36	George Pachtl	June 21, 1888	348.36
NW. ¼ of NE. ¼	3	108	32	41.13	Wenzel Remiger	May 29, 1889	456.40 443.60	900.00	86.10	May 30, 1889, to June 3, 1891	986.10	Wenzel Remiger	June 3, 1891	986.10
SW. ¼ of SW. ¼	35	109	32	40	Blasius Haala	Oct. 14, 1889	400.00	208.00	89.60	Oct. 16, 1889, to Oct. 11, 1893	297.60			154.56
SW. ¼ of NE. ¼	3	108	32	40	John Upson	June 1 1889	400.00	176.00	91.84	June 13, 1889, to May 26, 1893	267.84			204.48
SE. ¼ of NE. ¼	5	108	32	40	Franz Schroepter	June 11, 1889	1,203.70	603.70	277.20	Sept. 18, 1889, to June 10, 1893	880.90			589.20
SW. ¼ of NE. ¼ and E. ½ of NW. ¼	5	108	32	120.37	Terry Crumlett	Oct. 31, 1889	2,000.00	2,000.00	168.70	Nov. 2, 1889, to May 10, 1893	2,168.70	Terry Crumlett	May 10, 1893	1,258.50
SE. ¼	21	109	32	160	George Stelzer, jr	Sept. 16, 1889	450.00	150.00	113.82	Nov. 15, 1889, to Dec. 4, 1893	263.82			130.70
SW. ¼ of NW. ¼	27	109	32	40	John Stelzer	Sept. 16, 1889	900.00	250.00	246.40	Nov. 15, 1889, to Dec. 4, 1893	486.40			284.65
N. ½ of NW. ¼	27	109	32	80	Joseph Sellner	June 22, 1889	800.00	410.00	181.30	June 22, 1889, to June 12, 1893	591.30			402.15
E. of SW. ¼	31	109	32	160	Wenzel Schiller	June 4, 1889	1,760.00	440.00	431.40	Nov. 29, 1889, to Mch. 11, 1893	871.40			563.60
NE. ¼	35	109	32	160	Emil Altermatt	May 5, 1891	800.00	150.00	160.00	May 5, 1891, to Nov. 18, 1893	310.00			218.25
S. ½ of NE. ¼	5	108	33	80	Wolfgang Brandl	Oct. 15, 1889	800.00	280.00	194.28	Oct. 15, 1889, to Dec. 16, 1893	474.28			303.03
S. ½ of NW. ¼	5	108	33	80	Heinrich Dohrmann	June 19, 1883	720.00	720.00	162.12	June 21, 1883, to June 17, 1889	882.12	Heinrich Dohmann	June 17, 1889	882.12
N. ½ of SE. ¼	3	108	33	80	Frederick W. Hormann	June 23, 1886	700.00	700.00	265.95	July 1, 1886, to Sept. 29, 1892	965.95	Friedrich W. Hormann	September 29, 1892	589.15
S. ½ of SE. ¼	3	109	33	80	Fred Mielke	June 3, 1886	720.00	491.45	214.94	June 3, 1886, to July 7, 1892	706.39			554.91
N. ½ of SW. ¼	3	109	33	80	Ferdinand Trebesch	Oct. 3, 1882	720.00	720.00	176.40	Oct. 4, 1882, to Sept. 20, 1889	896.40	Ferdinand Trebesch	September 20, 1889	896.40
S. ½ of SW. ¼	3	109	33	80	John W Kolbe	Jan. 7, 1886	700.00	700.00		Jan. 7, 1886	700.00	John W. Kolbe	January 7, 1886	700.40
E. ½ of SE. ¼	5	109	33	80	Bernard Blomeke	June 22, 1883	720.00	720.00	164.88	June 22, 1883, to June 15, 1889	884.88	Fritz Winkelmann	June 15, 1889	884.88
W. ½ of SE. ¼	5	109	33	80	Bernard Blomeke	Nov. 27, 1882	714.00	714.00	64.57	Nov. 27, 1882, to Feb. 7, 1885	778.57	Bernard Blomeke	February 7, 1885	778.57
E. ½ of NE. ¼	9	109	33	80	Fred Mielke	May 10, 1881	808.00	808.30	213.15	May 10, 1881, to Oct. 11, 1887	1,021.15	Fred Mielke	October 11, 1887	1,021.15
W. ½ of NE. ¼	9	109	33	80	Adeline Mielke	Oct. 13, 1884	1,169.00	979.00	383.67	Oct. 13, 1884, to Jan. 13, 1893	1,362.67			1,135.77
E. ½ of NW. ¼ and NW. ¼ of SE. ¼	9	109	33	120	Otto Mielke	July 25, 1885	800.00	608.00	258.18	July 25, 1885, to July 7, 1892	866.18			709.17
W. ½ of NW. ¼	9	109	33	80	Fred Mielke	Oct. 10, 1887	1,128.85	628.85	316.66	Oct. 10, 1887, to Jan. 11, 1893	945.51			664.94
SW. ¼ of SE. ¼ and E. ½ of SW. ¼	9	109	33	120	Claus Meinert	June 1, 1887	400.00	320.00	99.65	June 1, 1887, to May 27, 1893	419.65			325.65
SW. ¼ of SW. ¼	9	109	33	40	Claus Meinert	May 15, 1884	360.00	360.00	90.72	May 15, 1884, to May 12, 1892	450.72	Claus Meinert	May 12, 1892	414.72
NW. ¼ of SW. ¼	9	109	33	40	William Strasburg	May 1, 1884	800.00	800.00	237.51	May 1, 1884, to Apr. 29, 1892	1,037.51	William Strasberg	April 29, 1892	845.51
E. ½ of NE. ¼	11	109	33	80	William Strasburg	May 10, 1886	720.00	488.00	211.12	May 10, 1886, to May 6, 1893	699.12			612.70
W. ½ of NE. ¼	11	109	33	80	Friedrich Allwin	July 9, 1884	800.00	493.00	323.30	July 9, 1884, to Dec. 2, 1893	822.30			722.30
N. ½ of NW. ¼	11	109	33	80	Ludwig Remus	Mch. 26, 1887	400.00	272.00	109.76	Mch. 28, 1887, to Mch. 23, 1893	381.76			297.60
SE. ¼ of NW. ¼	11	109	33	40	Mike Garros	Dec. 8, 1883	400.00	400.00	90.50	Dec. 8, 1883, to Dec. 6, 1887	490.50	Karl Fast	December 6, 1887	490.50
SW. ¼ of NW. ¼	11	109	33	40	Heinrich Kaehler	May 22, 1878	341.60	341.60	57.63	May 22, 1878, to May 14, 1883	399.23	Heinrich Kaehler	May 14, 1883	399.23
NW. ¼ of NW. ¼	19	109	33	34.16	Heinrich Kaehler	June 20, 1887	360.00	240.00	101.64	June 20, 1887, to June 19, 1893	341.64			262.74
NE. ¼ of NW. ¼	19	109	33	40	Charles Gamble	June 1, 1892	800.00	200.00	64.55	June 1, 1892, to Dec. 9, 1892	264.55			
S. ½ of NW. ¼	19	109	33	74.48	Julius Weber	June 17, 1882	720.00	720.00	171.11	June 17, 1882, to Nov. 21, 1888	891.11	Theodor Weber	November 21, 1888	891.11
W. ½ of NE. ¼	21	109	33	80	Christopher Mainzer	Apr. 17, 1890	964.00	324.00	168.70	Apr. 17, 1890, to July 18, 1892	492.70			234.00
E. ½ of NW. ¼	25	109	33	80	John Girg	Apr. 20, 1889	1,000.00	520.00	240.40	Apr. 20, 1889, to Dec. 7, 1893	760.40			514.20
W. ½ of NW. ¼	25	109	33	80	Jacob Brust	June 12, 1889	900.00	500.00	196.00	June 12, 1889, to June 5, 1893	696.00			474.40
N. ½ of SE. ¼	25	109	33	80	John Groebner	June 12, 1889	900.00	500.00	196.00	June 12, 1889, to June 12, 1893	696.00			474.40
S. ½ of SE. ¼	29	109	33	160	Frank Augustin	Dec. 30, 1891	1,600.00	400.00	219.57	Dec. 30, 1891, to Nov. 1, 1893	619.57			
NW. ¼	29	109	33	80	Theodore Weber	Dec. 27, 1890	720.00	240.00	150.50	Dec. 27, 1890, to Dec. 23, 1893	390.50			171.30
E. ½ of SW. ¼	29	109	33	80	Carl Piske	Dec. 27, 1890	720.00	240.00	150.50	Dec. 27, 1890, to Dec. 23, 1893	390.50			171.30
W. ½ of SW. ¼	31	109	33	80	Charles Feierer	May 15, 1890	700.00	240.95	142.04	May 15, 1890, to May 31, 1893	382.99			180.94
W. ½ of NE. ¼	31	109	33	80	Michael Sturm	Mch. 28, 1890	762.00	518.27	126.87	Mar. 28, 1890, to May 31, 1893	645.14			358.67
NW. ¼ of SE. ¼ and lot No. 3	31	109	33	76.20	John Haala	Sept. 4, 1889	800.00	380.00	197.56	Sept. 4, 1889, to Oct. 12, 1893	577.56			264.66
W. ½ of SE. ¼	33	109	33	80	Samuel D. Peterson	Sept. 17, 1890	700.00	182.50	127.04	Sept. 17, 1890, to Dec. 15, 1892	309.54			175.31
E. ½ of SW. ¼	23	109	34	80	Hans Knudson	Dec. 14, 1891	750.00	750.00	10.00	Dec. 14, 1891, to Nov. 11, 1892	760.50	Hans Knudson	November 11, 1892	
W. ½ of NE. ¼	21	109	35	80	Jacob Runck	June 21, 1890	800.00	470.00	92.62	June 21, 1890, to Dec. 26, 1891	562.62			219.52
E. ½ of NE. ¼	21	109	35	80	Henry G. Beussmann	June 21, 1890	800.00	800.00	14.00	June 21, 1890, to Dec. 17, 1891	814.00	Henry G. Beussmann	December 17, 1890	814.00
SE. ¼	21	109	35	160	August Rogotzke	July 16, 1891	1,800.00	450.00	247.62	July 16, 1891, to Dec. 24, 1892	697.62			
E. ½ of NE. ¼	27	109	36	80	John Weber	May 28, 1891	800.00	150.00	131.95	May 28, 1891, to May 29, 1893	281.95			195.90
W. ½ of NE. ¼	27	109	36	80	John H. Weber	May 28, 1891	800.00	150.00	131.95	May 28, 1891, to May 29, 1893	281.95			195.90
E. ½ of NW. ¼	27	109	36	80	John H. Weber	Aug. 31, 1889	1,000.00	440.00	441.27	Aug. 31, 1889, to Nov. 8, 1893	681.27			398.07
W. ½ of NW. ¼	27	109	36	80	Dorothea Wagner	Aug. 31, 1889	800.00	345.00	191.88	Aug. 31, 1889, to Nov. 10, 1893	536.88			309.03
N. ½ of SE. ¼	27	109	36	80	John Weber	Aug. 31, 1889	900.00	361.60	194.47	Aug. 31, 1889, to Nov. 7, 1893	556.07			240.90
S. ½ of SE. ¼	27	109	36	80	George Schermann	Aug. 31, 1889	900.00	324.00	222.33	Aug. 31, 1889, to Nov. 30, 1893	546.33			358.26
SW. ¼	27	109	36	160	George Schermann	Apr. 17, 1891	1,720.00	320.00	348.35	Apr. 18, 1891, to Nov. 30, 1893	668.35			470.80
NE. ¼	29	109	36	160	Peter Yackel	July 17, 1890	1,800.00	495.00	281.28	July 17, 1890, to June 6, 1892	776.28			539.93
E. ½ of NW. ¼	35	109	36	80	John Yaeger	Mch. 28, 1890	1,000.00	1,000.00	72.33	Mch. 28, 1890, to Sept. 3, 1891	1,072.33	John Yaeger	September 3, 1891	512.33
W. ½ of NW. ¼	35	109	36	80	William Gochring	Mch. 28, 1890	1,000.00	614.00	116.20	Mch. 28, 1890, to May 30, 1892	730.20			396.20
Part SW. ¼ north of R. R	29	110	27	88.82	Thomas McOuatt	Oct. 31, 1879	2,283.40	2,283.40	323.85	Oct. 31, 1879, to Oct. 31, 1882	2,607.25	Thomas McOuat	October 31, 1893	2,607.25

15411—To face page 360.

C. Schurz, Secretary of the Interior, to the Commissioner of the General Land Office, to which complainant objected as being incompetent, immaterial, and irrelevant:

678 (Copy.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 29, 1879.

SIR: I have considered the case of Thomas McOuat vs. The
2032 Winona and St. Peter Railroad Company, involving the SW. ¼ sec. 29, town. 110, range 27, New Ulm land district, Minnesota, on appeal from your decision of November 26, 1878, adverse to the claim of Mr. McOuat.

The tract is within the six-mile limits of said road, the right of which attached on July 17, 1857. It was approved to the State of Minnesota for the benefit of said company on December 1, 1862.

Timothy T. White filed declaratory statement No. 12788 for said tract on May 26, 1857, alleging settlement of March 1 of the same year.

2033 On May 31, 1876, Mr. McOuat applied to file for said tract, alleging settlement on July 5, 1868, and his application was rejected by the local officers, and their decision was affirmed by your decision of January 26, 1877, and the case was then brought before me on appeal

After your decision was rendered affidavits were submitted tending to show that Timothy T. White had made a bona fide preemption settlement on the land prior to and was living on the same at the time the right of the road attached, and that the land had there-
2034 fore been erroneously certified to the State for the benefit of said company. In consideration of this allegation, and the further allegation that Mr. McOuat had made extensive and valuable improvements upon the land, I directed, by letter dated October
679 8, 1877, that a hearing should be held before the local land officers for the purpose of determining all of the facts relative to the validity of White's claim.

This action was not taken with a view of allowing McOuat to
2035 file for the land in the present condition, but for the purpose of ascertaining whether the facts were of a character to warrant the commencement of judicial proceedings to set aside the certification to the State, in the event that the company should refuse to relinquish its title to the land on demand.

A hearing was held before the local officers in May, 1878, and the testimony transmitted to your office in June following.

You decided that the testimony taken at the hearing did not affirmatively establish the fact that White's claim was a valid and
2036 subsisting one at the time the right of the road attached, and after a careful examination of record presented, I concur in your conclusion.

On June 3, 1878, counsel for the railroad company transmitted for consideration in connection with this case the record of certain judicial proceedings had in the circuit court of the United States for the eighth circuit district of Minnesota.

It appears from this record that on March 2, 1877, Ashbel H. Barney, grantee of the railroad company, commenced an action of ejectment against McOuat to recover possession of the land in 2037
question; and that on May 28, 1877, McOuat filed a bill of complaint in *in* equity in the same court, and obtained an injunction restraining further proceedings at law until his equitable rights were determined.

680 The bill of complaint set up as grounds for equitable relief the same facts which this hearing was ordered to determine. Issue was joined on answer and replication, and thereupon the court, at the December term, 1877, dismissed the bill for want of equity. In the suit at law judgment was rendered for the plaintiff. 2038

It will thus be seen that Mr. McOuat has had his day in court upon all the questions involved in this case.

At the time the hearing was ordered this Department had no knowledge of the fact that judicial proceedings had been instituted in the circuit court, and, as before stated, the only purpose in view in ordering the hearing was to ascertain whether the facts were of a character to warrant the commencement of judicial proceedings to avoid the title of the company.

If the true status of the case had then been known, no hearing 2039
would have been ordered.

I am of opinion, therefore, first, that the facts are not of a character to sustain an action to avoid the title of the company; and secondly, that as Mr. McOuat's claim had been judicially considered and determined adversely, the judgment of the court in said proceedings operates as an estoppel to further proceedings in the premises.

The appeal is therefore dismissed, and the papers transmitted with your letter of the 17th instant are herewith returned.

Very respectfully, 2040

C. SCHURZ, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

[Duly certified.]

681 [Title of cause.]

Stipulation as to conveyances.

It is hereby stipulated and admitted by and between the complainant and the defendants herein, for the purposes of the trial— 2041

First. That the following schedule shows:

(a) The deeds from the State of Minnesota to the defendant, the Winona & St. Peter Railroad Company, of all the tracts of land in the bill of complaint described; and

(b) All deeds and contracts of bargain and sale from said defendant, the Winona & St. Peter Railroad Company, to any and all said tracts of land, with dates, nature of instrument, and consideration expressed in such deeds or the purchase price named in such contracts, and the dates of record thereof; and 2042

(c) All other deeds and contracts of bargain and sale, or mortgages of the said lands, executed and delivered prior to the com-

mencement of the above-entitled action, with dates, nature of instruments, and consideration thereof, as shown therein, the amounts named as secured by such mortgages, and the dates of record of all such instruments.

This stipulation is made for the purpose only of preventing the expense and inconvenience of introducing the originals of the
2043 papers above mentioned or the records of the same.

The complainant does not by this stipulation admit the competency, relevancy, or materiality of the facts shown in said schedule, but on the contrary it is expressly understood and
682 agreed that complainant objects to any proof of such as incompetent, irrelevant, and immaterial, and this stipulation is subject to such objection.

Dated July 26, 1893.

ROBT. G. EVANS,
2044 *Special Assistant U. S. Attorney, of Counsel for Complainant.*

THOMAS WILSON and L. W. BOWERS,
Solicitors for the Defendants, the W. & St. P. R. Co. and the Minnesota Land & Investment Co.

J. A. TAWNEY and H. M. LAMBERTON,
Solicitors for the Defendants, The Winona & St. Peter Land Co., John W. Koelbe, Henry G. Bruesman, Claus Meinert, John Graebner, Hans Knudson,
2045 *and Dorathea Wagner.*

Sec. I, T. 109, R. 32.

Und. ½ SW. ¼, W. ½ NE. ¼, and NW. ¼. State of Minnesota to Winona & St. Peter Railroad Co., land grant deed, May 30, 1874.

Winona & St. Peter Railroad Co. to Winona & St. Peter Land Co., warranty deed, April 2, 1878; recorded Nov. 29, 1879.

Und. ½ SW. ¼. Winona & St. Peter Land Co. to Minn. Land & Investment Co., warranty deed, June 15, 1887; consideration,
2046 $600.00; recorded July 19, 1887.

Und. ½ W. ½ NE. ¼. Winona & St. Peter Land Co. to Geo. Pachtal, warranty deed, June 21, 1888; consideration, $303.00; recorded May 31, 1890.

683 Geo. Pachtal to E. H. Dickson, mortgage, Jan. 18, 1890; consideration, $111.00; recorded January 21, 1890.

Johan Joseph Schroepfer to Geo. Pachtal, warranty deed, Feb.
2047 19, 1891; consideration, $520.00; recorded May 25, 1891.

Und. ½, NW. ¼. Winona & St. Peter Land Co., to Michael Schrepfer; contract dated Feb. 1, 1886; consideration, $632.42.

Sec. 3, T. 108, R. 32.

NE. ¼. State of Minnesota to Winona & St. Peter Railroad Co., land grant deed, February 16, 1881.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed under decree, Nov. 28,
2048 1887; recorded Dec. 30, 1889.

NW. ¼ of NE. ¼. Winona & St. Peter Land Company to Menzel Remiger, warranty deed, June 3, 1891; consideration, $456.40; recorded Oct. 5, 1891.

SW. ¼ of NE. ¼. Winona & St. Peter Land Company to Blasius Halla; contract, Oct. 14, 1889; consideration, $400.00.

Sec. 5, T. 108, R. 32.

S. ½ of NE. ¼, E. ½ of NW. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, Feb. 16, 1881. 2049

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed under decree, Nov. 28, 1887; recorded Dec. 30, 1889. 684

SE. ¼ of NE. ¼. Winona & St. Peter Land Company to John Upson, contract, June 1, 1889; consideration, $400.00.

Sec. 5, T. 108, R. 32.

E. ½ of NW. ¼ and SW. ¼ of NE. ¼. Winona and St. Peter Land Company to Franz Schroepfer, contract, June 11, 1889; consideration, $1,203.70. 2050

Sec. 21, T. 109, R. 32.

SE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, Feb. 16, 1881.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed under decree, Nov. 28, 1887; recorded Dec. 30, 1889.

Winona & St. Peter Land Company to Terry Crumlett, contract, Oct. 31, 1889; consideration, $2,000. 2051

Sec. 27, T. 109, R. 32.

SW. ¼ of NW. ¼, N. ½ of NW. ¼ and SW. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, Feb. 16, 1881.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed under decree, Nov. 28, 1887; recorded Dec. 30, 1889.

SW. ¼ of NW. ¼. Winona & St. Peter Land Company to Geo. Stelzer, jr., contract, Sept. 16, 1889; consideration, $450.00. 2052

Sec. 27, T. 109, R. 32.

N. ½ of NW. ¼. Winona & St. Peter Land Company to John Stelzer, contract, Sept. 16, 1889; consideration, $900.00.

685 Sec. 35, T. 109, R. 32.

W. ½ SW. ¼ and W. ½ of SE. ¼. State of Minnesota to Winona St. Peter Railroad Company, land grant deed, Oct. 24, 1881.

2053 Sec. 35, T. 109, R. 32.

W. ½ NW. ¼, SW. ¼ SW. ¼, and NE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, Feb. 16, 1881.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed under decree Nov. 28, 1887; recorded Dec. 30, 1889.

SW. ¼ of SW. ¼. Winona & St. Peter Land Company to Wenzel Remiger; consideration, $443.80; warranty deed, June 3, 1891; recorded Oct. 5, '91.

2054 Sec. 35, T. 109, R. 32.

NE. ¼. Winona & St. Peter Land Company to Wenzel Schiller, contract June 4, 1889; consideration, $1,760.00.

Sec. 31, T. 109, R. 32.

SW. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, Feb. 16, 1881.

Winona & St. Peter Railroad Company to Winona & St. Peter
2055 Land Company, special warranty deed under decree Nov. 28, 1887; recorded Dec. 30, 1889.

E. ½ SW. ¼. Winona & St. Peter Land Company to Joseph Sellner, contract June 22, 1889; consideration, $800.

686 Sec. 5, T. 109, R. 33.

SE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, May 30, 1874.

Winona & St. Peter Railroad Company to Winona & St. Peter
2056 Land Company, warranty deed, April 2, 1878; recorded Nov. 29, 1879.

E. ½ of SE. ¼. Winona & St. Peter Land Company to John W. Koble, warranty deed, Jan. 7, 1886; consideration, $700.00; recorded May 26, 1886.

Sec. 5, T. 109, R. 33.

W. ½ of SE. ¼. Winona & St. Peter Land Company to Fritz Winkelmann, warranty deed, June 15, 1889; consideration, $720.00; recorded Oct. 30, 1890.

2057 Sec. 3, T. 109, R. 33.

S. ½. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, May 30, 1874.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, warranty deed, April 2, 1878; recorded Nov. 29, 1879.

N. ½ of SE. ¼. Winona & St. Peter Land Company to Heinrich Dohrmann, warranty deed, June 17, 1889; consideration, $720; recorded Jan. 13, 1890.

S. ½ of SE. ¼. Winona & St. Peter Land Company to Fred'k W. Hormann, contract June 23, 1886; consideration, $700. 2058

N. ½ of SW. ¼. Winona & St. Peter Land Company to Fred'k Mielke, contract June 3, 1886; consideration, $720.00.

687 Rt. of way 1 rod wide across W. end. Fred'k Mielke to Ferd. Trebesek: deed, Sept. 8, 1890; consideration, $25; recorded Sept 17, 1890.

Sec. 3, T. 109, R. 33.

S. ½ of SW. ¼. Winona & St. Peter Land Company to Ferdinand Trebesch; warranty deed, Sept. 20, 1889; consideration, $720; recorded Nov. 25, 1889. 2059

Sec. 9, T. 109, R. 33.

N. ½ SW. ¼ and W. ½ of SE. ¼. State of Minnesota to Winona & St. Peter Railroad Company; land grant deed, May 30, 1874.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company; warranty deed, April 2nd, 1878; recorded, Nov. 29, 1879.

E. ½ of NE. ¼. Winona & St. Peter Land Company to Bernard Blomeke; warranty deed, Feb. 7, 1885; consideration, $714.00; recorded Dec. 15, 1885. 2060

Bernard Blomeke & wife to Fred Mielke; warranty deed, Feb. 15, 1890; consideration, $3,300; recorded May 28, 1890.

Fred Mielke & wife to Bernard Blomeke; mortgage, Feb. 15, 1880; consideration, $2,800.00; recorded May 27, 1890.

Bernard Blomeke to Wm. F. Gieseke; assignment of m'tg'e, Oct. 20, 1890; consideration, $2,800.00; recorded April 23, 1892. 2061

W. ½ of NE. ¼. Winona & St. Peter Land Company to Fred. Mielke; warranty deed, Oct. 11, 1887; consideration, 808.00; recorded Jan. 28, 1888.

688 E. ½ of NW. ¼ & NW. ¼ of SE. ¼. Winona & St. Peter Land Company to Adeline Mielke; contract, Oct. 13, 1884; consideration, $1,169.00.

W. ½ of NW. ¼. Winona & St. Peter Land Company to Otto Mielke; contract, July 25, 1885; consideration, $800.00. 2062

E. ½ of SW. ¼ & SW. ¼ SE. ¼. Winona & St. Peter Land Company to Fred. Mielke; contract, Oct. 10, 1887; consideration, $1,128.85.

SW. ¼ of SW. ¼. Winona & St. Peter Land Company to Claus Meinert; contract, June 1, 1887; consideration, $400.00.

NW. ¼ of SW. ¼. Winona & St. Peter Land Company to Claus Meinert; warranty deed, May 12, 1892; consideration, $360.00.

Sec. 11, T. 109, R. 33. 2063

N. ½. State of Minnesota to Winona & St. Peter Railroad Company; land grant deed, May 30, 1874.

Winona & St. Peter Railroad Company to Winona & St.

Land Company; warranty deed, April 2, 1878; recorded Nov. 29, 1879.

E. ½ of NE. ¼. Winona & St. Peter Land Company to Wilhelm Straasburg; warranty deed, April 29, 1892; consideration, $800.00; recorded June 6, 1892.

2064 Sec. 11, T. 109, R. 33.

W. ½ of NE. ¼. Winona & St. Peter Land Company to Wilhelm Straszburg; contract, May 20, 1886; consideration, $720.00.

689 N. ½ of NW. ¼. Winona & St. Peter Land Company to Friedrich Alwya, contract, July 9, 1884; consideration, $800.00.

SE. ¼ of NW. ¼. Winona & St. Peter Land Company to Lud-
2065 wig Remus, contract, March 26, 1887; consideration, $400.00.

SW. ¼ of NW. ¼. Winona & St. Peter Land Company to Karl Fast, warranty deed, Dec. 6, 1887; consideration, $400.00; recorded Mch. 7, 1888.

Sec. 19, T. 109, R. 33.

NW. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, May 30, 1874.

Winona & St. Peter Railroad Company to Winona & St. Peter
2066 Land Company, warranty deed, April 2, 1878; recorded Nov. 29, 1879.

NE. ¼ of NW. ¼. Winona & St. Peter Land Company to Henry Kohler, contract, June 20, 1887; consideration, $360.00.

NW. ¼ of NW. ¼. Winona & St. Peter Land Company to Henry Kohler, warranty deed, May 14, 1883; consideration, $341.60; recorded May 22, 1884.

S. ½ of NW. ¼. Winona & St. Peter Land Company to Charles Gamble, contract, June 1, 1892; consideration, $800.00.

2067 Sec. 19, T. 109, R. 33.

SW. ¼ of SE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, May 30, 1874.

690 Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, warranty deed, April 2, 1878; recorded Nov. 29, 1879. W. & St. P. Land Co. still own it.

2068 Sec. 19, T. 109, R. 33.

NW. ¼ of SE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, Sept. 12, 1879.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed under decree Nov. 28, 1887; recorded Dec. 30, 1889.

Sec. 21, T. 109, R. 33.

W. ½ of NE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, May 30, 1874. 2069

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, warranty deed, April 2, 1878; recorded Nov. 29, 1879.

Winona & St. Peter Land Company to Theodore Weber, warranty deed, Nov. 21, 1888; consideration, $720.00; recorded May 28, 1889.

Theodore Weber to Margrett Bertrand, mtge. Dec. 13, 1890; consideration, $600.00; recorded Jan. 5, 1891.

Sec. 25, T. 109, R. 33.

E. ½ of NE. ¼, NW. ¼, and S. ½. State of Minnesota to Winona 2070
& St. Peter Railroad Company, land grant deed, Feb. 16, 1881.

Winona & St. Peter Railroad Company to Winona &
691 St. Peter Land Company, special warranty deed under decree Nov. 28, 1887; recorded Dec. 30, 1889.

E. ½ NE. ¼ and SW. ¼. W. & St. P. Land Co. still own.

E. ½ of NW. ¼. Winona & St. Peter Land Company to Chris- 2071
topher Mainzer; contract, April 17, 1890; consideration, $964.00.

W. ½ of NW. ¼. Winona & St. Peter Land Company to John Girg; contract, April 20, 1889; consideration, $1,000.00.

Sec. 25, T. 109, R. 33.

N. ½ of SE. ¼. Winona & St. Peter Land Company to Jacob Brust; contract, June 12, 1889; consideration, $900.00. 2072

S. ½ of SE. ¼. Winona & St. Peter Land Company to John Groebner; contract, June 12, 1889; consideration, $900.00.

Sec. 29, T. 109, R. 53.

W. ½. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, May 28, 1877.

Winona & St. Peter Railroad Company to Winona & St. Peter 2073
Land Company; warranty deed, April 2, 1878; recorded Nov. 29, 1879.

NW. ¼. Winona & St. Peter Land Company to Frank Augustin; contract, Dec. 30, 1891; consideration, $1,600.00.

692 E. ½ of SW. ¼. Winona & St. Peter Land Company to Theo. Weber; contract, Dec. 27, 1890; consideration, $720.00.

W. ½ of SW. ¼. Winona & St. Peter Land Company to Carl Fiske; contract, Dec. 27, 1890; consideration, $720.00. 2074

Sec. 33, T. 109, R. 33.

NE. ¼ and W. ½ SE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, Feb. 16, 1881.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed under decree, Nov. 28, 1887; recorded Dec. 30, 1889.

W. ½ of SE. ¼. Winona & St. Peter Land Company to John
2075 Haala; contract, Sept. 4, 1889; consideration, $800.00.

Sec. 35, T. 109, R. 33.

N. ½. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, Feb. 16, 1881.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed under decree, Nov. 28, 1887; recorded Dec. 30, 1889.

Sec. 31, T. 109, R. 33.

2076 W. ½ of NE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, April 19, 1875.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, warranty deed, April 2, 1878; recorded Nov. 29, 1879.

693 Winona & St. Peter Land Company to Chas. Feierer, contract, May 15, 1890; consideration, $700.80.

Sec. 31, T. 109, R. 33.

NW. ¼ of SE. ¼ & lot 3. State of Minnesota to Winona & St.
2077 Peter Railroad Company, land grant deed, Feb. 16, 1881.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed, under decree Nov. 28, 1887; recorded Dec. 30, 1889.

Winona & St. Peter Land Company to Michael Sturm, contract, Mch. 28, 1890; consideration, $762.00.

Sec. 23, T. 109, R. 34.

W. ½ SE. ¼ & E. ½ SW. ¼. State of Minnesota to Winona &
2078 St. Peter Railroad Company, land grant deed, May 30, 1874.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, warranty deed, April 2, 1878; recorded Nov. 29, 1879.

W. ½ of SE. ¼. Winona & St. Peter Land Company to Samuel D. Peterson, contract, Sept. 17, 1890; consideration, $700.00.

E. ½ of SW. ¼. Winona & St. Peter Land Company to Hans Knudson, contract, Dec. 14, 1891; consideration, $750.00.

Sec. 21, T. 109, R. 35.

2079 E. ½. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, Sept. 12, 1879.

Winona & St. Peter Railroad Company to Winona & St.
694 Peter Land Company, special warranty deed, under decree Nov. 28, 1887; recorded Dec. 20, 1889.

W. ½ of NE. ¼. Winona & St. Peter Land Company to Jacob Runck, contract, June 21, 1890; consideration, $800.00.

E. ½ of NE. ¼. Winona & St. Peter Land Company to Henry 2080
G. Bussmann, warranty deed, Dec. 17, 1890; consideration, $800; recorded Feb. 18, 1891.

SE. ¼. Winona & St. Peter Land Company to Aug. Rogotzke, contract, July 16, 1891; consideration, $1,800.00.

Sec. 5, T. 108, R. 35.

SE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, May 30, 1874. 2081

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed, under decree Nov. 28, 1887; recorded Dec. 30, 1889.

Sec. 21, T. 109, R. 36.

SE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, May 30, 1874. 2082

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company, special warranty deed, under decree Nov. 28, 1887; recorded Dec. 30, 1889.

695 Sec. 27, T. 109, R. 36.

All. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, May 30, 1874. Winona & St. Peter Railroad Company to Winona & St. Peter Land Company; special warranty deed under decree Nov. 28, 1887; recorded Dec. 30, 1889. 2083

NE. ¼. Winona & St. Peter Land Company to John Weber & John H. Weber; contract, May 28, 1891; consideration, $1,600.00.

E. ½ NW ¼, N. ½ SE. ¼. Winona & St. Peter Land Company to John Weber; contract, Aug. 31, 1889; consideration, $1,900.00.

W. ½ NW. ¼. Winona & St. Peter Land Company to Dorothea Wegner; contract, Aug. 31, 1889; consideration, $800.00.

S. ½ SE. ¼. Winona & St. Peter Land Company to Geo. Scher- 2084
mann; contract, Aug. 31, 1889; consideration, $900.00.

SW. ¼. Winona & St. Peter Land Company to Geo. Schurmann; contract, April 17, 1891; consideration, $1,720.00.

Sec. 29, T. 109, R. 36.

NE. ¼. State of Minnesota to Winona & St. Peter Railroad Company; land grant deed, May 30, 1874.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company; special warranty deed under decree Nov. 28, 2085
1887; recorded Dec. 30, 1889.

Winona & St. Peter Land Company to Peter Yackel; contract, July 17, 1890; consideration, $1,800.00.

696 Sec. 35, T. 109, R. 36.

W. ½. State of Minnesota to Winona & St. Peter Railroad Company; land grant deed, May 30, 1874.

Winona & St. Peter Railroad Company to Winona & St. Peter
2086 Land Company; special warranty deed under decree Nov. 28, 1887; recorded Dec. 30, 1889.

E. ½ of NW. ¼ Winona & St. Peter Land Company to John Yaeger, warranty deed, Sept. 3, 1891; consideration, $1,000.00.

W. ½ of NW. ¼. Winona & St. Peter Land Company to Wm. Goehing; contract, March 28, 1890; consideration, $1,000.00.

Sec. 5, T. 108, R. 32.

2087 S. ½ NE. ¼, S. ½ NW. ¼. State of Minnesota to Winona & St. Peter Railroad Company; land grant deed, Feb. 16, 1881.

Winona & St. Peter Railroad Company to Winona & St. Peter Land Company; special warranty deed under decree Nov. 28, 1887; recorded, Dec. 30, 1889.

S. ½ of NE. ¼. Winona & St. Peter Land Company to Emil Alternatt; contract, May, 5, 1891; consideration, $800.00.

S. ½ of NW. ¼. Winona & St. Peter Land Company to Wolf-
2088 geng Brandt; contract, Oct. 15, 1891; consideration, $800.00.

Sec. 29, T. 110, R. 27.

NW. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, Feb. 26, 1872. Winona & St.
697 Peter Railroad Company to Winona & St. Land Company; warranty deed, May 4, 1877; recorded Sept. 3, 1877.

Sec. 29, T. 110, R. 27.

SW. ¼. State of Minnesota to Winona & St. Peter Railroad
2089 Company, land grant deed, Feb. 26, 1872. Winona & St. Peter Railroad Company to Wilson C. Brown, warranty deed, Sept. 4, 1872; consideration, $800; recorded June 20, 1883.

Wilson C. Brown to Ashbell H. Barney, special warranty deed, Feb. 24, 1877; consideration, $800; recorded June 20, 1883.

A. H. Barney to Winona & St. Peter Land Company; special warranty deed, Oct. 30, 1882; consideration, $1; recorded June 20, 1883.

38.82 acres S. of R. R. Winona & St. Peter Land Company
2090 to Thos. McOuat, warranty deed, Oct. 31, 1882; consideration, $2,283.40; recorded March 24, 1883.

Sec. 25, T. 108, R. 38.

NE. ¼. State of Minnesota to Winona & St. Peter Railroad Company; land grant deed, Feb. 16, 1881.

E. ½ of NE. ¼. Winona & St. Peter Railroad Company to Edward M. Anderson, contract for warranty deed, March 24, 1886; consideration, $520.00. Edward M. Anderson to A. M. Peterson, assignment of contract, April 24, 1887; consideration, $156.00.

Sec. 25, T. 108, R. 38. 2091

W. ½ of SE. ¼. State of Minnesota to Winona & St. Peter Railroad Company, land grant deed, May 30, 1874.

698 Winona & St. Peter Railroad Company to Geo. B. Walker; contract for warranty deed, Feb. 16, 1887; consideration, $630.00.

Winona & St. Peter Railroad Company to heirs at law and devisees of Geo. B. Walker, deceased; warranty deed, Nov. 11, 2092
1892; consideration, $630.00.

[Title of cause.]

Stipulation for interrogatories and cross-interrogatories to Martin L. Sykes.

It is hereby stipulated by and between the United States, complainant, and The Winona & St. Peter Land Company, defendant, in each and both of the above entitled suits that the deposition of 2093
Martin L. Sykes whose office is at No. 52 Wall street, New York City, New York, may be taken before any notary public in said city of New York on the interrogatories and cross-interrogatories hereto annexed, which deposition shall be certified by the notary before whom it is taken and transmitted by mail to "William A. Spencer, clerk of the United States district court, St. Paul, Minnesota," and shall be by him transmitted and delivered to this court with the other evidence taken before him in the above-entitled suits; and the said deposition of said Sykes so taken, certified, and transmitted, shall and may, without any other formality, by 2094
received in evidence in each of said suits with the same effect as if it had been taken according to the Statutes of the United States and the rulings of this court, provided, that either party may

699 upon any hearing of said cause, object thereto, or to any part thereof, that the same is not responsive, or that it is incompetent, irrelevant, or immaterial, or that any interrogatory or cross-interrogatory has not been fully answered.

St. Paul, Minn., April 23rd, 1884.

ROBT. G. EVANS, 2095
Special Ass't. U. S. Attorney of Counsel for Complainant.
JAMES A. TAWNEY AND H. M. LAMBERTON,
Solicitors for The Winona & St. Peter Land Company.

[Title of cause.]

Interrogatories to be propounded to Martin L. Sykes, a witness to be called and examined on the part of the defendant the Winona & St. Peter Land Company et al. 2096

1. What is your name, age, residence, and business?
2. Where did you reside, and what was your business in October, 1867?
3. Were you, at the date last aforesaid, an officer of the Chicago & Northwestern Railway Company—if so, what officer?

4. Do you know whether said Chicago & Northwestern Railway Company, or anyone for it, or in its interest, in October, 1887, pur-
2097 chased the Winona and St. Peter Railroad in the State of Minnesota—if so, state from whom it was then so purchased, and what your knowledge is as to the fact?

5. If you state that it was so purchased from Danford N.
700 Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, Charles F. Latham, Ashbel H. Barney, Samuel N. Hoyt, and Alfred M. Hoyt, state whether prior to, and at the time of such purchase and sale said Danford N. Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney,
2098 Charles F. Latham, Ashbel H. Barney, Alfred M. Hoyt, and Samuel N. Hoyt were the sole owners of that line of road and of all the capital stock thereof, and if so, whether in and by said sale they transferred said road and all of said capital stock to the person or persons to whom they made the sale.

6. State whether prior to such sale said Danford N. Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, Charles F. Latham, Ashbel H. Barney, Samuel N. Hoyt, and Alfred M. Hoyt, were in possession of said road and all of its equipments and property, and whether upon such sale they sur-
2099 rendered such possession and the purchasers went into possession.

7. State whether a contract or contracts setting forth the terms and conditions of such sale, and the consideration therefor, were reduced to writing. If so, attach to your deposition a copy of such written contract or contracts.

8. State, if you know, whether a part of the consideration to be paid to said Danford N. Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, Charles F. Latham, Ashbel H. Barney, Samuel N. Hoyt, and Alfred M. Hoyt, for the said
2100 road and its capital stock, was an agreement on the part of the Winona and St. Peter Railroad Company "to sell and convey to the said parties (Barney, Hoyt *et al.*) as many acres of land heretofore granted by Congress to the State of Minnesota
701 as the said party of the second part (the Winona and St. Peter Railroad Company) shall receive from said State by reason of the construction of the portion of the Winona and St. Peter Railroad heretofore constructed, to wit: One hundred and five miles thereof, extending westwardly from Winona, excepting and reserving, nevertheless, any and all parts and parcels of such
2101 lands (if any such there be), which may be necessary for the track of said railroad, or the right of way, or any depot or depot grounds thereof, or any other purpose incidental to the operation of said railroad, constructed or to be constructed, or any part thereof."

[Title of cause.]

Cross-interrogatories to be propounded to the witness, Martin L. Sykes,
2102 *on behalf of the complainant, under the agreement and stipulation hereto attached.*

1. Are not the Danford N. Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, Charles F. Latham, Ashbel

H. Barney, Samuel N. Hoyt, and Alfred M. Hoyt, referred to in the questions propounded by counsel for defendant, the Winona & St. Peter Land Company, the same persons between whom and the Winona & St. Peter Railroad Company a contract was entered into on or about the 31st day of October, 1867, for an adjustment of 2103
their claim for money advanced to the said Winona & St. Peter Railroad Company and for building a portion of said road, and were not said persons, at the time they advanced said money
702 and built said portion of said road, the sole holders and owners of stock of the Winona & St. Peter Railroad Company?

2. Is it not the fact that the contract or agreement on the part of the Winona & St. Peter Railroad Company, referred to in Interrogatory No. 8, was made prior to the sale referred in Interrogatory No. 4, and is not said contract and agreement the same contract and 2104
agreement recognized and referred to in the contract attached to your answer to Interrogatory No. 7?

[Title of cause.]

Answer of Martin L. Sykes to foregoing interrogatories and cross-interrogatories.

Deposition of Martin L. Sykes taken under and by virtue of the stipulation hereto annexed, on this 14th day of May, A. D. 1894, 2105
at the office of the said Martin L. Sykes, No. 52 Wall street, in the city of New York, before George H. Corey, a notary public of the State of New York, duly commissioned and sworn, dwelling in the city of New York.

The said Martin L. Sykes being by the said notary public first duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says as follows:

In answer to Interrogatory No. 1: Martin L. Sykes; age 68; resides in the city of Mount Vernon, Westchester County, New 2106
York; railroad business.

In answer to Interrogatory No. 2: I resided in the same place in October, 1867 (which was then known as the town of
703 Eastchester, before being incorporated into the present city of Mount Vernon), and was engaged in railroad business.

In answer to Interrogatory No. 3: At the date aforesaid I was an officer of the Chicago & Northwestern Ry. Co., and was its second vice-president. 2107

In answer to Interrogatory No. 4: In reply to this interrogatory, I know that persons in the interest of the Chicago & Northwestern Ry. Co. did purchase, in October, 1867, the Winona & St. Peter Railroad in the State of Minnesota, and said purchase was made from Danford N. Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, Charles F. Latham, Ashbel H. Barney, Samuel N. Hoyt, and Alfred M. Hoyt. I had knowledge of the transaction through negotiations which resulted in the purchase, which negotiations were, for the most part, conducted by Wm. B. 2108
Ogden, on behalf of the Chicago & Northwestern Ry. Co., and

Danford N. Barney and Ashbel H. Barney, on behalf of themselves and their associates, as owners of the said Winona & St. Peter Railroad.

In answer to Interrogatory No. 5: The persons named in this interrogatory were the sole owners of the said line of railroad and all the capital stock thereof, amounting to 4,000 shares, all of which stock was held in different lots by the said vendors and was by them respectively transferred to the persons who were designated to
2109 receive it for and on behalf of the Chicago & Northwestern Railway Company.

In answer to Interrogatory No. 6: The persons or parties named in this interrogatory were in possession of the said railroad
704 and all its equipment and property prior to such sale, and upon such sale they surrendered possession to the purchasers aforesaid.

2110 In answer to Interrogatory No. 7: A contract in the form of an agreement or memorandum of purchase was made, setting forth the terms and conditions of such sale and the consideration therefor in writing, which was formulated into the agreement as executed between the said parties, the vendors, and the Chicago & Northwestern Railway Company, and between the same parties and the Winona & St. Peter Railroad Company, respectively, dated October 31st, 1867, a printed copy of which agreement (in two documents, marked Exhibits A and B, respectively, by the notary) is attached to this deposition.

2111 In answer to Interrogatory No 8: A part of the consideration to be paid to the said vendors for said railroad and its capital stock was an agreement to sell and convey to the said vendors, Danford N. Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, Charles F. Latham, Ashbel H. Barney, Samuel N. Hoyt, and Alfred M. Hoyt, as many acres of land heretofore granted by Congress to the State of Minnesota as the said Winona & St. Peter R. R. Co. should receive from said State by reason of the construction of the portion of the Winona & St. Peter Railroad heretofore
2112 constructed, to wit: 105 miles thereof, extending westwardly from Winona, excepting and reserving, nevertheless, any and all parts and parcels of such lands, if any such there be, which may be necessary for the track of said railway, or right of way, or depot
705 or depot grounds thereof, or any other purpose incidental to the operation of said railroad, constructed or to be constructed, or any part thereof.

2113 In answer to Cross-interrogatory No. 1: The said Danford N. Barney, Jesse Hoyt, Angus Smith, William G. Fargo, Benjamin P. Cheney, Charles F. Latham, Ashbel H. Barney, Samuel N. Hoyt, and Alfred M. Hoyt, referred to in the questions propounded by counsel for defendant, the Winona & St. Peter Land Co., were the same persons between whom and the Winona & St. Peter Railroad Company a contract was entered into, on or about the 31st of October, 1867, for an adjustment of their claim for money advanced to the said Winona & St. Peter Railroad Company and for build-
2114 ing a portion of said road, and the said persons who advanced said

money and built said portion of said road were the sole holders and owners of the stock of the Winona & St. Peter Railroad Company at the time of its sale to the persons in the interest of the Chicago & Northwestern Railway Company. But this deponent has no personal knowledge of the time or times that they heretofore advanced said money and built said portion of said road and became the sole holders and owners of the said stock.

In answer to Cross-interrogatory No. 2: The sale of the Winona & St. Peter Railroad, referred to in direct interrogatory No. 4, was 2115
the same sale that was concluded and executed in the contract referred to in direct interrogatory No. 7, and the contract or agreement on the part of the Winona and St. Peter Railroad Co.,
706 referred to in direct interrogatory No. 8, was, in its execution and operation, simultaneous with the contract as embraced in the two agreements referred to in direct interrogatory No. 7, and both of said agreements were parts of the same transaction, evidencing the same contract, and are fully and correctly set forth in the two printed copies of the same attached to this deposition. 2116

(Signed) MARTIN L. SYKES.

STATE OF NEW YORK,
City and County of New York, ss:

I, George H. Corey, a notary public of the State of New York, duly commissioned and sworn, dwelling in the city of New York, do certify that the annexed stipulation was executed and the testimony of Martin L. Sykes was taken before me at the office of the said Martin L. Sykes, No. 52 Wall street, in the city of New 2117
York, on this 14th day of May, A. D. 1894, and was reduced to writing by a disinterested person, under my direction and in my presence; that the said testimony was taken by and pursuant to the authority and requirements of the said stipulation upon the interrogatories and cross-interrogatories thereto annexed and herewith returned; that said witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, relative to the causes specified in the said stipulation, and that the testimony of said witness was carefully read by said witness and then by him subscribed in my presence. 2118

In witness whereof I have hereunto set my hand and affixed my notarial seal this 14th day of May, A. D. 1894.

(Signed) GEO. H. COREY,
Notary Public.

707 [Title of cause.]

Stipulation as to maps and exhibits in testimony of M. L. Sykes.

For the purpose of saving the expense of printing the same, it is hereby agreed that the printed copies of Exhibits A and B attached to the answers to interrogatories propounded to Martin L. Sykes 2119
in the above-entitled cause may be used upon any hearing of this case without being reprinted in the record of said cause prepared for use in the trial court.

It is also further stipulated that each of the maps introduced in evidence in the above-entitled cause may be used upon any hearing thereof, either in the above or any other court in which the same may be heard, without being printed in the record.

Dated May 18, 1894.

ROBT. G. EVANS,
2120 *Special Asst. U. S. Attorney, of Counsel for Complainant.*

WILSON & BOWERS,
Solicitors and of Counsel for Defendants,
The Winona & St. Peter Railroad Company and
The Minnesota Land & Investment Company.

J. A. TAWNEY AND H. M. LAMBERTON,
Solicitors and of Counsel for
the Winona & St. Peter Land Company and others.

2121 [Title of cause.]

Stipulation as to complainant's Exhibit B.

It is hereby stipulated and agreed that complainant's Exhibit B, introduced in evidence in the above-entitled cause, to wit:
708 A tabular statement showing the land grants made by Congress for the construction of railroads, wagon roads, canals, and river improvements, with data relative thereto, transmitted by S. M. Stockslager, Acting Commissioner, to Hon. William F. Vilas, Secretary of the Interior, under date of March 8, 1888, may be
2122 used upon the hearing of the above-entitled cause without printing the same in the trial record herein; reserving to the defendants, however, the objections thereto taken at the time said statement was introduced in evidence, and the right to the defendants, or any of them, to move to strike out the same when the evidence in the case is reported.

Dated this 26th day of March, 1894.

ROBT. G. EVANS,
Special Assistant U. S. Attorney, of Counsel for Complainant.

WILSON & BOWERS,
2123 *Of Counsel and Solicitors for Defendants,*
The Winona & St. Peter Railroad Company and
The Minnesota Land & Investment Company.

JAMES A. TAWNEY AND HENRY M. LAMBERTON,
Of Counsel and Solicitors for the Winona
& St. Peter Land Company and other Defendants.

[Title of cause.]

2124 *Order appointing special master.*

Pursuant to the stipulation of the parties hereto attached, dated March 21, 1894,

It is ordered that William A. Spencer, esq., clerk of the United States district court in and for the district of Minnesota, be,
709 and is hereby, appointed as of April 1st, 1893, as a special master to take and report the testimony in the above-entitled

cause, and that all testimony which has heretofore been or may hereafter be taken before him in said cause, or before other officers agreed upon by the parties and transmitted to him, together with all records, documents, and stipulations filed with him as evidence in said 2125
cause, be by him transmitted and reported to the clerk of the United States circuit court in which this cause is pending, and that all objections to testimony so transmitted and reported as provided in said stipulation be reserved to the parties herein, as is therein provided.

It is further ordered that this order be entered nunc pro tunc as of April 1st, 1893.

Dated March 29th, 1894.

By the court:

ALFRED D. THOMAS, *Judge.* 2126

[Title of cause.]

Stipulation for appointment of special master.

It is hereby stipulated and agreed by and between the complainant and defendants in the above-entitled cause that the testimony taken upon the part of the complainant and defendants herein, before William A. Spencer, clerk of the United States district court in and for said district, as a master agreed upon for such taking, together with all testimony taken before other officers within or without the 2127
State of Minnesota, by stipulations heretofore entered into or upon notice, shall be filed by and through said Spencer in the office of the clerk of the United States circuit court above named, and that
710 said testimony shall have the same effect in all respects and be used as evidence upon the trial of said cause as fully as if regularly taken before a master in chancery appointed by said court.

It is further stipulated that an order shall be made by said court nunc pro tunc as of April 1st, 1893, appointing said Spencer as special master to take and report testimony in said cause. 2128

It is further stipulated and agreed that neither of the parties hereto waive any objections to the competency, relevancy, or materiality of the testimony so taken, or any other objection saved and reserved by the stipulations for taking any portion of said testimony or by objections made at the time witnesses were examined or records introduced, but that such objections and all thereof are reserved, to be urged upon the hearing of said cause in said court.

Dated March 21, 1894.

ROBT. G. EVANS, 2129
Special Asst. U. S. Atty., of Counsel for Complainant.

WILSON & BOWERS,
Of Counsel and Solicitors for Defendants
The Winona & St. Peter Railroad Co. and
The Minnesota Land & Investment Co.

JAMES A. TAWNEY AND HENRY M. LAMBERTON,
Of Counsel and Solicitors for The Winona &
St. Peter Land Company and other Defendants. 2130

711 United States circuit court for the district of Minnesota.
a28 Term minutes, June term, A. D. 1894. August 16th, 1894.

Thursday morning court opened pursuant to adjournment.
Present: Hon. John A. Williams, judge; Hon. E. C. Stringer, U. S. district attorney.

Eq. C. No. 657.

a29

UNITED STATES OF AMERICA
vs.
THE WINONA & ST. PETER RAILROAD COMPANY, Winona & St. Peter Land Company, Minnesota Land and Investment Company, Samuel D. Peterson, Dorothea Wagner, Hans Knudson, John Groebner, Carl Piska, Henry G. Buessmann, John W. Kolbe, John Girg, Claus Minert, Heinrich Dohrman, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz,
a30 Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Fredrick W. Horman, Wolfgang Brandl, Wenzel Schiller, Emil Altermatt, Ludwig Remus, Jane McQuatt and Thomas McQuatt, William Strassburg, Michael Strum, and Charles Feirer.

712 This cause regularly coming on for hearing upon the pleadings, final proofs, and arguments of counsel, the complainant appears by its solicitor, Robert G. Evans, and the defendants, Winona & St. Peter Railroad Company, Winona & St. Peter
a31 Land Company, and Minnesota Land and Investment Company, by Wilson & Bowers, their solicitors; and Samuel D. Peterson, Dorothea Wagner, Hans Knudson, Claus Minor, John Groebner, Carl Piska, Henry G. Buessmann, John W. Kolbe, John Girg, and Claus Minert, by their solicitors, J. A. Tawney and H. M. Lamberton; and Michael Strum, George Lent, John Nowak, Wenzel Schiller, John Haala, Ferdinand Trebesch, Joseph Sellner, Frederick Alwin, Christopher Mainzer, Frederick W. Horman, Wenzel Rem-
a32 iger, Emil Altermatt, Charles Feirer, Ludwig Remus, Wolfgang Brandl, William Schultz, Edward Casey, Jacob Duncan, George Ebilcisor, and William Strassburg, by their solicitor, George W. Somerville; and Jane McQuatt and Thomas McQuatt by their solicitors, Lind and Hagberg.

Thereupon defendants' solicitors file a written motion to strike out the deposition of Hon. F. W. Lamoreux, Commissioner of the General Land Office; also the deposition of W. F. McGee, of the railroad division of the Land Office.

a33 Whereupon the court, after hearing the arguments of said solicitors and being fully advised in the premises, sustains said motion. And it is hereby ordered that the depositions of said named parties

be, and they are hereby, suppressed and stricken out. This ruling is made on behalf of all the defendants who have appeared.

713 Defendants' said solicitors also, orally and in open court, enter a motion to strike out complainant's Exhibit B, being a tabular statement purporting to show the lands granted by Congress for the construction of railroads, wagon roads, canal and river improvements, with data relevant thereto, transmitted by a34
S. M. Stockslager, Acting Commissioner, to Hon. Wm. F. Vilas, under date of March 8, 1888.

Whereupon, said motion being fully argued by the solicitors for said parties and the court being fully advised concerning the same, it is by the court ordered that said motion be and the same hereby is sustained, and said Exhibit B is stricken out. This rule is made on behalf of all the defendants who have appeared.

Thereupon the above cause is argued on behalf of the complainant by Robert G. Evans, its solicitor, and the hearing thereof not a35
being concluded at the hour of adjournment it is ordered that further proceedings herein be, and they are hereby, postponed until to-morrow morning at 10 o'clock.

United States circuit court for the district of Minnesota. Term minutes, June term, A. D. 1894. August 17th, 1894. Eq. C. a36
No. 657. Before Judge Williams.

UNITED STATES
vs.
WINONA & ST. PETER RAILROAD COMPANY,
714 Winona and St. Peter Land Company, Minnesota Land and Investment Company, et al.

The above-entitled cause coming on to be further heard, it is further argued on behalf of the complainant by Robert G. Evans, a37
and on behalf of the defendants by Thomas Wilson.

And the hearing of the same not being concluded at the hour of adjournment, it is ordered that further proceedings herein be and they are hereby postponed until to-morrow morning at 10 o'clock.

United States circuit court for the district of Minnesota. Term a38
minutes, June term, A. D. 1894. August 18th, 1894. No. C. Eq. 657. Before Judge Williams.

UNITED STATES
vs.
WINONA & ST. PETER RAILROAD COMPANY,
Winona and St. Peter Land Company, Minnesota Land and Investment Company, et al. a39

The above-entitled cause coming on to be further heard, the same is further argued on behalf of the defendants by Thomas Wilson, their solicitor, and the hearing of the same not being concluded at the hour of adjournment, it is ordered that further
715 proceedings herein be and they are postponed until Monday morning at 10 o'clock.

Ordered that this court do now adjourn until Monday morning at 10 o'clock.

A true record.
a40 Attest: O. B. HILLIS, *Clerk.*

United States circuit court for the district of Minnesota. Term minutes, June term, A. D. 1894. August 20th, 1894. Eq. C. No. 657. Before Judge Williams.

a41 UNITED STATES
vs.
WINONA & ST. PETER RAILROAD COMPANY, Winona and St. Peter Land Company, Minnesota Land and Investment Company, et al.

The above-entitled cause coming on to be further heard, the same is further argued on behalf of the complainant by Robert G.
a42 Evans, complainant's solicitor.

Whereupon the same is duly submitted and by the court taken under advisement.

[Title of cause.]

Term minutes, June term, A. D. 1894. August 29th, 1894.

716 *Decree.*

This cause came on to be heard at the June, A. D. 1894, term of this court upon the pleadings and final proofs therein and was argued by counsel.

a43 And thereupon, upon consideration thereof, it is hereby by the court ordered, adjudged, and decreed that the complainant's bill of complaint herein be and the same is in all things dismissed, and that the defendants recover of the complainants their costs and disbursements, to be taxed, and have execution therefor.

Dated this 29th day of August, A. D. 1894.

JOHN A. WILLIAMS, *Judge.*

a44 In the circuit court of the United States, district of Minnesota, second division. No. C. 657, equity.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE WINONA & ST. PETER RAILROAD COMPANY, The Winona and St. Peter Land Company, and The Minnesota Land and Investment Company,
a45 et al., defendants.

It is hereby stipulated by and between the attorneys for the above named parties, respectively, that the venue of each of the above entitled cases be changed to the third division of said circuit court.

717 Dated, St. Paul, March 1st, 1894.

ROBERT G. EVANS,
Special Asst. United States District Attorney,
and of Counsel for the Complainants.

WILSON & BOWERS, a46
Attorneys for the Defendants,
the W. & St. P. R. R. Co., the W. & St. P. L. Co.,
and the Minn. Land & Investment Co.

H. M. LAMBERTON AND J. A. TAWNEY,
Attorneys for the Defendants,
the Winona & St. Peter Land Co.
and fifteen other defendants, Winona, Minn.

GEO. W. SOMERVILLE,
Attorney for the following defendants, viz: a47
Strum, Lent, Nowak, Schiller, Haala, Trebesh,
Sellner, Alwin, Mainzer, Horman, Remiger, Altermatt,
Feirer, Remus, Brandl, Schultz, Knudson, Casey,
Duncan, Ebilcisor, and Strassburg.

(Endorsed:) Stipulation for change of venue. Filed Aug. 16th, 1894. Oscar B. Hillis, clerk.

718 Circuit court of the United States, in and for the district of Minnesota, third division. a1

THE UNITED STATES OF AMERICA, complainant and appellant,
vs. a2
THE WINONA & ST. PETER RAILROAD COMPANY, The Winona & St. Peter Land Company, The Minnesota Land and Investment Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, Frank Schreopfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, a3
Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Fredrick W. Horman, Wolfang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus, respondents.

719 THE UNITED STATES OF AMERICA, *ss:*

To the Winona & St. Peter Railroad Company, the Winona & St. Peter Land Company, the Minnesota Land & Investment Company, Heinrich Dohrman, Dorethea Wagner, Carl Piske, John W. Kolbe, Claus Meinhart, John Greebner, Samuel D. Peterson, a4
John Girg, Henry Benssman, Frank Augustin, Blasius Haala,

John Upson, John Stelzer, Frank Schroepfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Horman, Wolfang Brandl, William Strassburg,
a5 Michael Strum, Charles Feiser, Wenzel Schiller, Emil Altermatt, and Ludwig Remus; greeting:

You and each of you are hereby cited and admonished to be and appear at the United States circuit court of appeals for the 8th circuit, to be holden at the city of St. Louis, Missouri, sixty days from and after the date hereof, pursuant to an appeal taken out of and allowed by the circuit court of the United States for the district of Minnesota, third division, wherein the United States of
a6 America is appellant, and the Winona & St. Peter Railroad Company, the Winona & St. Peter Land Company, the Minnesota Land & Investment Company, Heinrich Dohrman, Dorethea Wagner, Carl Piske, John W. Kolbe, Claus Meinhart, John Greebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stalzer, Frank
720 Schroepfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebish, Wenzel Remiger, Frederick W. Horman, Wolfgang
a7 Brandl, William Strassburg, Michael Strum, Charles Feiser, Wenzel Schiller, Emil Attermatt, and Ludwig Remus are respondents, to show cause, if any there be, why the decree in the said appeal mentioned should not be set aside and corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of the United States circuit court for the district of Minnesota, this 13th day of November, in the year of our Lord one thousand eight hundred and
a8 ninety-four.

WALTER H. SANBORN,
Circuit Judge.

[Title of cause.]

Now comes the United States of America, complainant in the above entitled action, by Robert G. Evans, special assistant United States attorney, hereunto lawfully authorized and directed by the
a9 honorable the Attorney-General of the United States so to do, and conceiving itself aggrieved by the decree entered in the above entitled cause on the 29th day of August, 1894, doth hereby appeal from said decree to the United States circuit court of appeals for the eighth circuit, and said complainant prays that its said appeal may be allowed and that a transcript of the record, proceedings,
721 and papers upon which said decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the eighth circuit.

ROBERT G. EVANS,
Special Asst. United States Atty., Counsel & Solicitor
a10 *for Complainant and Appellant.*

Dated November 10, 1894.

And now, to wit, on November 13th, 1894, it is ordered that the appeal in the above entitled cause be allowed as prayed for.

WALTER H. SANBORN,
Circuit Judge, 8th Circuit.

[Title of cause.]

Assignment of error. a11

And now, in the foregoing entitled cause, and at the time of filing therein of the foregoing and attached petition for appeal, comes the said appellant, the United States of America, by Robert G. Evans, special assistant United States attorney, hereunto lawfully authorized and directed by the honorable Attorney-General of the United States, and says that in the records and proceedings in the above entitled cause there is manifest error, in this, to wit, that the court erred—

First. In not holding that the lands in the bill of complaint described, lying within the place limits of the line of road of the Winona & St. Peter Railroad Company, to which homestead or pre-emption rights were attached before, at, and after the time the route of said road opposite and past the same was definitely
722 fixed, was excepted from the operation of the grants made by Congress in aid of the construction of the line of said road. a12

Second. In not holding that the officials of the land department in certifying such lands to the State of Minnesota for the benefit of said line acted without authority of law and that such action was void. a13

Third. In not holding that the lands involved in this suit certified for the benefit of the line of road of the St. Paul & Sioux City Railroad Company were excepted from the operation of the grants in aid of that line.

Fourth. In not holding that the officials of the land department in certifying such lands to the State of Minnesota for the benefit of said line acted without authority of law and that such action was void.

Fifth. In not holding that the defendants obtained no right, title, or interest whatever in or to any of the lands in controversy by reason of the certification thereof to the State of Minnesota for the benefit of either of said lines of road. a14

Sixth. In holding that in view of former rulings of the officers of the Land Department and the lapse of time since the land in controversy was certified, the complainant was not entitled to the relief prayed for in its bill.

Seventh. In holding that the St. Paul & Sioux City Railroad Company obtained by selection under the grants in aid of its line, any right or title to land lying within the place limits of the Winona road. a15

Eighth. In holding that the lands involved in this suit had, before the same was commenced, passed into the hands of a
723 bona fide purchasers, through and under the Winona & St. Peter Railroad Company, and that because of this complainant could not recover.

Ninth. In holding that complainant could not recover because of laches.

a16 Tenth. In holding that complainant could not recover because of the staleness of its claim.

Eleventh. In holding that the Winona & St. Peter Land Company was a good faith purchaser of any of the land in controversy.

Twelfth. In holding that D. N. Barney and his associates, referred to in the record, were good faith purchasers of any of the land in controversy, shown to have been conveyed to them or to others at their request.

a17 Thirteenth. In holding that any of the defendants were good faith purchasers of the lands claimed by them respectively.

Fourteenth. In holding that the certification to the State of Minnesota for the benefit of the Winona & St. Peter Railroad Company and the conveyance by said State to said company vested in the said railroad company the legal or any title to the land so certified and conveyed.

Fifteenth. In holding that the certification to the State of Minnesota of the lands shown to have been certified for the benefit of the
a18 line of road of the St. Paul & Sioux City Railroad Company and the conveyance thereof to the Winona & St. Peter Railroad Company under the circumstances shown in the record vested in the latter company the legal or any title whatever to said lands.

Sixteenth. In holding that although the lands in contro-
724 versy may have been certified without authority, complainant can not under the act of Congress of March 3, 1887, have such certification set aside, if the land has passed into the hands of bona fide purchasers.

Seventeenth. In holding that lands lying within the place limits of one road, but excepted from the grant in aid of such road by
a19 reason of homestead or preemption rights having attached thereto, can be selected as indemnity or lieu lands by another road after such homestead or preemption rights have been cancelled, if lying within its indemnity limits under a subsequent or contemporaneous grant.

Eighteenth. In sustaining the motion of defendants to strike out the interrogatories and cross-interrogatories propounded to the Commissioner of the General Land Office, and his answers thereto, relative to the nonadjustment of the grant in aid of the line of road
a20 of the Winona & St. Peter Railroad Company, found in the record on pages 166–170, inclusive.

Nineteenth. In sustaining the motion to strike out the interrogatories and cross-interrogatories propounded to the chief clerk of the railroad division of the General Land Office, and his answers

thereto, relative to the nonadjustment of the grant in aid of the line of road of the Winona & St. Peter Railroad Company, as found in the record on pages 171-175, inclusive.

Twentieth. In dismissing the complainant's bill of complaint. a21

Wherefore the said appellant prays that the decree of the said circuit court of the United States for the district of Minnesota in the above-entitled cause be reversed.

ROBERT G. EVANS,
Special Asst. United States Atty.,
Solicitor and Counsel for Appellant.

725 [Title of cause.]

The complainant in the above-entitled action having appealed from the decree rendered therein dismissing its bill of complaint to the circuit court of appeals of the Eighth circuit, and said appeal having been allowed, it is hereby stipulated and agreed by and a22
between the parties to the above-entitled action that in order to save the expense of reprinting the record in said action on appeal, and to expedite the hearing of said appeal, the trial record as printed for the hearing in the circuit court, having added thereto the decree, petition for and order allowing appeal, complainant's assignments of error, and citation, all of which have been duly served; the opinion of the court below upon dismissing said bill when filed, the motion of defendants to strike out the interrogato- a23
ries, cross-interrogatories, and the answers thereto propounded to and answered by the Commissioner of the General Land Office and the chief of the clerk railway division of the General Land Office; the stipulation and order changing the venue of said action, and all orders made and stipulations entered into not now contained in said printed record of the United States circuit court for the district of Minnesota, third division, may be considered and taken by said circuit court of appeals as the full, true, and complete record of all proceedings therein, except that the maps used in the hear- a24
ing of said cause in the court below may also be used without printing the same in the record of said circuit court of appeals; and all opinions and decisions stipulated as evidence in the court below may be used upon the hearing of the appeal from the

printed books in which they appear. It is further stipulated
726 and agreed that the complainant need not file with the clerk of said circuit court of appeals to exceed 12 copies of said printed record.

ROBERT G. EVANS,
a25 *Solicitor and Counsel for Complainant and Appellant.*

WILSON & BOWERS,
Solicitors for Winona & St. Peter Railroad Company, and Minn. Land and Investment Company, Respondents.

J. A. TAWNEY AND H. M. LAMBERTON,
Solicitors for Winona & St. Peter Land Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinhart, John Groebner, Samuel D. Peterson, John Girg,
a26 *Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, and Frank Schroepfer.*

G. W. SOMERVILLE,
Solicitor for Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Fredrick Alvin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Horman, Wolfgang Brandl, William Strassburg, Michael Strum, Chas. Feiser,
a27 *Wenzel Schiller, Emil Altermatt, and Ludwig Remus.*

All the foregoing endorsed. Filed November 13th, 1894. Oscar B. Hillis, clerk.

727 And on the third day of December, A. D. 1894, an appearance of counsel for appellant was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. No. 564. December term, 1894.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE WINONA AND ST. PETER RAILROAD COMPANY et al.

The clerk will enter my appearance as counsel for the appellant.

ROBT. G. EVANS,
Spl. Asst. U. S. Atty., for Appellant.

Endorsed: "U. S. circuit court of appeals, eighth circuit, December term, 1894. No. 564. United States of America, appellant, vs. Winona & St. Peter R. R. Co. et al., appearance. Filed Dec. 3, 1894. John D. Jordan, clerk. Robt. G. Evans, spl. asst. U. S. attorney, counsel for appellant."

And on the third day of December, A. D. 1894, an appearance of counsel for appellees, Winona & St. Peter Railroad Company et al., was filed in the clerk's office of said circuit court of appeals, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. No. 564. December term, 1894.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE WINONA AND ST. PETER RAILROAD COMPANY ET AL.

728 The clerk will enter my appearance as counsel for the W. & St. P. R. Co. & the Minn. Land & Inv. Co.

THOMAS WILSON.
LLOYD W. BOWERS.

(Endorsed:) "U. S. circuit court of appeals, eighth circuit. December term, 1894. No. 564. The United States of America, appellant, vs. The Winona and St. Peter Railroad Co. et al. Appearance. Filed Dec. 3, 1894. John D. Jordan, clerk. Thomas Wilson, Lloyd W. Bowers, counsel for appellees, W. & St. P. R. R. Co. & Minn. Land & Inv. Co."

And on the third day of December, A. D. 1894, an appearance of counsel for appellees, Winona & St. Peter Land Company et al., was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. No. 564. December term, 1894.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE WINONA AND ST. PETER RAILROAD COMPANY ET AL.

The clerk will enter my appearance as counsel for the Winona and St. Peter Land Company and fourteen other defendants.

HENRY M. LAMBERTON.
JAMES A. TAWNEY.

(Endorsed:) "U. S. circuit court of appeals, eighth circuit. December term, 1894. No. 564. The United States of America, appellant, vs. The Winona and St. Peter Railroad Co. et al. Appearance. Filed Dec. 3, 1894. John D. Jordan, clerk. Henry M. Lamberton, James A. Tawney, counsel for certain appellees."

729 And on the third day of December, A. D. 1894, an appearance of counsel for appellees, Jacob Duncan, et. al., was filed in

the clerk's office of said circuit court of appeals, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit, December term, 1894.

THE UNITED STATES OF AMERICA, APPELLANT, *vs.* WINONA AND ST. PETER RAILROAD COMPANY, Winona and St. Peter Land Company, The Minnesota Land and Investment Company, and others, appellees.	No. 564. Appeal from circuit court of the United States, district of Minnesota, third Division.

To the Clerk of the above-named Court:

I hereby enter my appearance in said above-named appeal as solicitor for appellees, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Manzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederic W. Horman, Wolfgang Brandl, William Straseberg, Charles Feiser, Wenzel Schiller, Emil Altermott, and Ludwig Remus, and I hereby consent and agree that said cause may be advanced for hearing and heard at the December term, 1894, of said court sitting in St. Louis, Missouri, without further notice to me.

Dated this 27th day of November, 1894.

GEO. W. SOMERVILLE,
Solicitor for above-named Appellees.

(Endorsed:) "No. 564. United States of America, appellant, vs. Winona and St. Peter R. R. Co. Appearance. Filed Dec. 3,
730 1894, John D. Jordan, clerk. Geo. W. Somerville, counsel for Jacob Duncan et al., appellees."

And on the fifteenth day of January, A. D. 1895, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. December term, 1894. Tuesday, January 15th, 1895.

THE UNITED STATES OF AMERICA, appellant, *vs.* THE WINONA AND ST. PETER RAILROAD Company et al., appellees.	No. 564. Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been heretofore advanced and called for hearing this day, argument was commenced by Mr. Robert G. Evans in behalf of the appellant, continued by Mr. Thomas Wilson in behalf of the appellees, and concluded by Mr. Robert G. Evans for appellant. Thereupon this cause was submitted to the court upon the transcript of record from said circuit court and the briefs of counsel filed herein.

And on the sixth day of May, A. D. 1895, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

731 United States circuit court of appeals, eighth circuit. No. 564. May term, A. D. 1895.

UNITED STATES OF AMERICA, appellant,
vs.
THE WINONA & ST. PETER RAILROAD COMPANY, The Winona & St. Peter Land Company, The Minnesota Land & Investment Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, Frank Schreopfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Horman, Wolfang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus, appellees.

Appeal from the circuit court of the United States for the district of Minnesota.

Mr. Robert G. Evans for the United States.

Mr. Thomas Wilson (Mr. Lloyd W. Bowers was with him on the brief) for The Winona & St. Peter Railroad Company and The Minnesota Land and Investment Company.

Mr. J. A. Tawney and Mr. H. M. Lamberton filed a brief for The Winona and St. Peter Land Company.

Before CALDWELL, SANBORN, and THAYER, circuit judges.

SYLLABUS.

1. LAND DEPARTMENT OF THE UNITED STATES.—JUDICIAL POWER.

The Land Department of the United States (including in that term the Secretary of the Interior, the Commissioner of the General Land Office, and their subordinates) is a special tribunal, vested with judicial power to hear and determine the claims of all parties to the
732 public lands which it is authorized to dispose of, and also with power to execute its judgments by conveyances to the parties it decides are entitled to them.

2. CERTIFICATION OF TITLE UNDER A RAILROAD LAND GRANT.—EFFECT.

A certification of land to the State for the benefit of a railroad company, under the acts of March 3, 1857 (11 Stat., 195), of March 3, 1865 (13 Stat., 526), and of May 12, 1864 (13 Stat., 72), by the Land Department of the United States has the same legal effect as a patent.

3. PATENT TO LAND.—LEGAL EFFECT.

A patent or certificate of title to land within its jurisdiction issued by the Land Department is a judgment of that tribunal and a conveyance of the legal title.

4. PATENT TO LANDS WITHOUT THE JURISDICTION OF THE LAND DEPARTMENT.—EFFECT.

A patent or certificate of the Land Department for land over which that tribunal has no power of disposition and no jurisdiction to determine the claims of applicants for is absolutely void and conveys no title. Land the title to which had passed from the Government to another before the claim on which the patent was based was initiated, land reserved from sale and disposition by the Land Department for military or other like purposes, land reserved by a claim under a Mexican or Spanish grant sub judice, and land for the disposition of which the acts of Congress have made no provision is of this character.

5. PATENT TO LAND WITHIN THE JURISDICTION OF THE LAND DEPARTMENT.—EFFECT.

A patent or certificate of the Land Department for land over which that Department has the power of disposition and the jurisdiction to determine the claims of applicants for is impervious to collateral attack and conveys the legal title whether its decision upon the rights of the applicants is right or wrong.

6. CANCELATION OF PATENTS ERRONEOUSLY ISSUED.—POWER OF COURT OF EQUITY.

A court of equity may, in a direct proceeding for that purpose, set aside a patent or certificate or declare the legal title under it to be held in trust for one who has a better right to it in cases in which the action of the Land Department over a matter within its jurisdiction has resulted from fraud, mistake, or erroneous views of the law.

7. CERTIFICATION OF LANDS THROUGH MISTAKE OF LAW.—EFFECT.

Under the act of March 3, 1857, as amended by the act of March 3, 1865, supra, the Land Department, through a mistake of law, certified to the State of Minnesota, for the benefit of a beneficiary of those acts, lands within the primary limits of its grant which were subject to homestead entries and preemption filings at the time of the definite location of its line of railroad, which had been duly canceled by a proper officer
733 of the Land Department before the certificates were made: Held, that the Land Department had jurisdiction of the subject-matter of the certificates, and although its decision was erroneous the certificates were not absolutely void, but merely voidable, and they conveyed the legal title to the State and its grantees.

8. BONA FIDE PURCHASERS.

In a suit in equity brought by the United States under the act of March 3, 1887 (24 Stat., 556), to cancel such certificates and to restore the title to the land to the United States, the equities of bona fide purchasers who hold the legal title under the certificates are superior to those of the United States and constitute a good defense to the suit.

9. BONA FIDE PURCHASERS.—NECESSARY PARTIES.

Such parties who hold the legal title are indispensable parties to a suit in equity to annul that title.

10. BONA FIDE PURCHASERS.—CONSIDERATION.

The complete satisfaction and discharge of an existing indebtedness is a sufficient and valuable consideration for the purchase of land or other property.

11. LAND GRANTS.—EXCEPTIONS FROM LANDS GRANTED IN PLACE.

Lands within the place limits of the grants to a beneficiary of the acts of March 3, 1857, May 12, 1864, or March 3, 1865, supra, which are sold or otherwise appropriated or to which preemption rights are attached at the time of the definite location of the line of its railroad are excepted from the grant to that company.

12. LAND GRANTS.—EXCEPTIONS FROM LANDS GRANTED IN INDEMNITY LIMITS.

Lands within the indemnity limits of the grant to a beneficiary of the acts of March 3, 1857, May 12, 1864, or March 3, 1865, supra, which were sold or otherwise appropriated or to which preemption rights had attached at the time of their selection and its approval, and those only, are excepted from the lands within the indemnity limits granted to such a beneficiary.

13. LAND GRANTS.—EXCEPTIONS.

Accordingly, lands within the place limits of the grant for the Winona Company and within the indemnity limits of the grant to the Sioux City Company under those acts, to which homestead entries and preemption filings, that were subsequently canceled by the proper officer of the Land Department, were attached at the time of the definite location of the line of the railroad of the Winona Company, were excepted from the grant of lands in place to that company, and after such cancellations were made, were rightfully selected and certified to the Sioux City Company as a part of its indemnity lands.

The facts are stated in the opinion.

SANBORN, J., delivered the opinion of the court:

In this case the appellant, the United States, brought a suit in equity in the circuit court against the Winona & St. Peter Railroad Company, a corporation, and more than thirty-five of its immediate
734 and remote grantees to set aside the certification from the United States to the State of Minnesota of about two thousand three hundred and eighty acres of land and to annul the conveyances thereof by the State to the railroad company. This suit was brought under the provisions of the act of Congress of March 3, 1887 (24 Stat., ch. 376, p. 556), to provide for the adjustment of land grants in aid of the construction of railroads. It was grounded on the fact that, at the respective times of the definite location of the railroad of the Winona Company, homestead entries or preemption filings had been made upon the lands described in the bill, so that according to the decision of the Supreme

Court in Kansas Pacific Railway Company v. Dunmeyer, 113 U. S. 629, 641, 644, these lands were excepted from the grant to the State for the benefit of the railroad company.

The existence of the homestead entries and preemption filings, when the line of the railroad was definitely fixed, was conceded by the appellees, and their defense was that the certification of the lands to the State, although erroneous, was not void, but conveyed the legal title; that the appellees other than the railroad company had become the bona fide purchasers of all but two hundred and forty acres of this land in reliance upon this certificate before the Government made any claim to recover it; that the two hundred and forty acres which were still held by the railroad company were rightfully certified to the State for the benefit of the St. Paul & Sioux City Railroad Company, another corporation, and hence that there was no equity in the bill.

In the view we take of this case the material facts disclosed at the hearing are these:

The lands in question were certified to the State under the provisions of the following acts of Congress, viz: The act of March 3, 1857 (11 Stat., ch. 99, p. 195), which granted to the Territory of Minnesota, for the purpose of aiding in the construction of certain railroads, including that of the Winona Company and that of the St. Paul & Sioux City Railroad Company, every alternate section of land designated by odd numbers for six sections in width on each side of each of said roads, and provided that in case it should appear that the United States had, when the lines or routes of said roads were definitely fixed, sold any sections or parts of sections granted, or that the right of preemption had attached to the same, then lands in lieu of those so sold or preempted might be selected from alternate sections of the public domain within fifteen miles of the lines of said roads; the act of Congress approved March 3, 1865 (13 Stat., ch. 105, secs. 1 and 2, p. 526), which increased the quantity of lands granted by the act of March 3, 1857, to aid in the construction of the railroad of the Winona Company to ten sections per mile, extended the indemnity limits of the grant to twenty miles, and provided that the lands granted by that act and by the act of March 3, 1857, should "in all cases be indicated by the Secretary of the Interior;" and the act of May 12, 1864 (13 Stat., p. 72), which granted to the State of Minnesota for the purpose of aiding in the construction of the railroad of the St. Paul & Sioux
735 City Railroad Company four additional sections per mile, to be selected within twenty miles of the line of said railroad, upon the same conditions, restrictions, and limitations as were contained in the act of March 3, 1857.

The line of the railroad of the Winona company was definitely fixed from its eastern terminus westerly to the west line of range 31 on July 29, 1858, to the west line of range 37 as early as August 3, 1864, and to the west line of range 38 on February 23, 1867. The line of the railroad of the Sioux City company was definitely fixed from its eastern terminus to section 31, town. 207, range 31 on February 20, 1858, and thence westerly to section 30, town. 104, range 39 on August 10, 1865. Both of these railroad companies built their railroads in a time and manner that entitled them to the benefit of the acts of Congress cited, so far as those acts and the timely construction of their railroads conferred upon

them any right to these lands, and the railroad of the Winona company was built past all and across some of these lands before the year 1873.

All of these lands were certified to the State before June 7, 1879, and all but six hundred and eighty acres of them before May 15, 1874. A part of them were certified to the State for the benefit of the Winona company and a part were certified to the State for the benefit of the Sioux City company. Those certified for the benefit of the Winona company were conveyed to that company by the State prior to 1880.

The lands certified to the State for the benefit of the St. Paul & Sioux City Railroad Company were within the place limits of the Winona company and within the indemnity limits of the Sioux City company. When the line of the railroad of the Winona company was definitely fixed opposite to them they were subject to homestead entries or preemption filings, which were subsequently canceled by the proper officer of the land department of the United States. After these entries and filings had been canceled, the Sioux City company selected these lands as indemnity lands under its grants, and they were thereupon certified to the State for its benefit. There was such a deficiency in the lands in place granted to the Sioux City company that all the public lands within its indemnity limits were required to fill it. In 1875, before the governor of the State had conveyed these lands to the Sioux City company, the Winona company brought suit against it for an injunction forbidding that company to apply to or to receive from the governor of the State a conveyance of any of these lands, and for a decree that the Winona company was justly entitled to them and to a conveyance of them from the State. In 1885 the Winona company succeeded in obtaining a final decision of the Supreme Court entitling it to this relief (St. Paul Railroad v. Winona Railroad, 112 U. S., 720), and the governor of the State thereupon conveyed these lands to the Winona company.

On October 1, 1867, D. N. Barney and eight other persons owned the stock of the Winona company. These persons had, at the request of the company, loaned to it large sums of money and had constructed one
736 hundred and five miles of its railroad from Winona to Waseca, Minnesota. In payment of this loan and for the construction of this railroad, the corporation on that day agreed to deliver to these men certain amounts of its stocks and bonds, and sold and agreed to convey to them or the parties to whom they directed it to convey as many acres of land as the corporation should receive on account of the construction of that one hundred and five miles of railroad, and to convey in satisfaction of this contract all the lands it should receive within its twenty-mile limits, commencing at the eastern terminus of its railroad and running westerly until the full quantity was conveyed, excepting, however, such portions of said lands as were necessary to the operation of its railroad. At the same time, and as a part of the same transaction, Barney and his associates sold their stock in the Winona company to parties in control of the Chicago & Northwestern Railway Company, and the sale of and agreement to convey these lands was part of the consideration for the sale of the stock.

Some of the lands covered by this contract were sold to innocent third parties before 1876. In that year the appellee, The Winona & St. Peter Land Company, a corporation, was organized with a capital stock of five

hundred thousand dollars, and, with this stock, it bought the unsold lands covered by the contract of October 31, 1867, and the obligations of the purchasers of the lands sold by Barney and his associates, for the unpaid purchase price thereof.

Prior to 1878 the Winona Railroad Company conveyed to the parties designated by Barney and his associates all the lands in controversy, except two hundred and forty acres in range 38, which had been certified to the Sioux City Company, and except those which the Winona Company conveyed to the land company on November 20, 1887, in obedience to the decision of the Supreme Court of the United States in Winona & St. Peter Railroad Company v. Barney, 113 U. S., 618, and Barney v. Winona & St. Peter Railroad Company, 117 U. S., 228. In 1878 Barney and his associates commenced a suit in the proper court in the State of Minnesota to compel the Winona Railroad Company to convey the lands last mentioned to them or to the parties they designated under the contract of October 31, 1867. That suit was removed to the United States circuit court for the district of Minnesota, where a decree was rendered in April, 1881, that the Winona Company should convey these lands under the contract to the complainants in that suit or to the parties they might designate. In 1886 this decree was affirmed on appeal, by the Supreme Court, and on November 20, 1887, the Winona Company conveyed these lands to the Winona & St. Peter Land Company pursuant to that decree.

According to the uniform decisions of the officers of the land department of the United States from the passage of the acts of Congress under which these lands were certified to these railroad companies until the decision of the Supreme Court in 1884 in Kansas Pacific Railway Company v. Dunmeyer, 113 U. S., 641, these lands fell under the grant to the Winona Company, when the preemption filings and homestead
737 entries upon them at the time the lines of the railroads were definitely fixed, were subsequently canceled by the proper officers of the land department, and according to these decisions they were properly certified to the State for the Winona Railroad Company. But that was an erroneous view of the law. (Kansas Pacific Railway Company v. Dunmeyer, supra.)

Neither Barney nor any of his associates, nor the land company, nor any of the appellees who purchased from any of them, discovered this error or received notice of any claim of the United States to any of these lands, or of any defect in the title to them, until about March, 1891, when the United States demanded the reconveyance of them from the railroad company under the act of 1887. In the meantime many tracts of these lands had been sold by Barney and his associates and by the land company, and they were then held under deeds and contracts from them by their immediate and remote grantees, many of whom had paid taxes and made valuable improvements upon the lands. The land company itself had paid taxes upon them to the amount of $7,993.33. There never had been any final adjustment of these land grants between the United States and the railroad companies.

Upon this state of facts the court below dismissed the bill.

The determination of the questions presented by four of the alleged errors assigned by the appellant will be decisive of this case. These errors are:

1. That the court below erred in holding that the action of the officers of the Land Department in certifying to the State of Minnesota, for the benefit of the Winona Railroad Company, the lands within the place limits of its grants on which homestead entries or preemption filings which had subsequently been canceled existed at the time of the definite location of its line, though erroneous, was not absolutely void, but was merely voidable at the suit in equity of the party who had the better right to the title, and that the certificates those officers issued conveyed the legal title to the State and its grantees.

2. That the circuit court erred in holding that the United States had no equitable right to these lands superior to that of the bona fide purchasers who had acquired this legal title before the United States gave any notice of their mistake or of its claim to recover the lands.

3. That the court below erred in holding that the immediate and remote grantees of the Winona Railroad Company, who were parties to this suit, were bona fide purchasers of the lands bought by them respectively.

4. That the court erred in holding that the lands within the place limits of the grants to the Winona Company, and within the indemnity limits of the grants to the Sioux City Company, upon which homestead entries and preemption filings that were subsequently canceled by the proper officer of the Land Department existed at the time of the definite location of the line of the railroad of the Winona Company, were, after these cancelations were made, properly selected and rightfully certified to the Sioux City Company by the officers of the Land Department.

This is one of five cases argued at the last term in which the questions presented by the first three errors assigned arise. In some of
738 these cases the question is mooted whether or not a preemption right attached to any of the public land within the meaning of the Congressional land grants by the mere filing of a declaratory statement in a case in which the preemptor never settled upon the land or otherwise complied with the law relative to preemption rights. This question and the cognate question whether or not the railroad company or its grantees are entitled to question the attachment of the preemption right at all, when the declaratory statement was filed on a tract of land at the time the railroad company definitely located its line, it has been unnecessary for us to consider in reaching a satisfactory decision of these cases, and we express no opinion upon them. For the purpose of the determination of these cases we concede to the United States, but we do not decide, that the existence of a preemption filing upon a tract of land at the time of the definite location of the line of a land-grant railroad excepted the tract from the grant to the railroad to the same extent as the existence of a homestead entry upon it would have done.

Under this concession, it must be admitted that the decision of the officers of the Land Department, evidenced by their certificates, that the grants to the Winona Railroad Company attached to the lands in controversy, was erroneous. They should have held that these lands were excepted from these grants by the existence of the homestead entries and

preemption filings upon them when the line of the railroad was definitely located, and that these lands did not fall within the grants to that company when the entries and filings were subsequently canceled. (Kansas Pacific Railway Company v. Dunmeyer, 113 U. S., 641; Burr v. Greeley, 3 C. C. A., 357; 52 Fed. Rep., 926; 10 U. S. App., 409.)

But was the decision and judgment of these officers void, or only voidable? Counsel for the Government insist with great earnestness that the cases just cited conclusively answer this question and preclude farther discussion. A careful examination of the opinions, however, has led us to the conclusion that these cases are not decisive of, and that they are hardly persuasive upon, this question. A determination of it was not necessary to the decision of either of the cases, so that whatever was said concerning it was obiter dicta. In Kansas Pacific Railway Company v. Dunmeyer no certificate or patent had issued to the railroad company, but a patent had issued to an adverse claimant of the land. The action was for the breach of a covenant in a deed made by a grantee of the railroad company, and it was sustained on the ground that the railroad company never had any title and the patentee had. In Burr v. Greeley, a remote grantee under the railroad company, who was in possession of the land, claiming from the United States the rights of a bona fide purchaser under the act of 1887, brought an action against his grantor for breach of covenant on the ground that the railroad company never had any title, because preemption rights had attached to the land at the time of the definite location of the line of the railroad. This court held that the plaintiff could not maintain his action, because he could not retain
739 the benefits given to him as a bona fide purchaser from the railroad company, or its grantee, under the act of 1887, and at the same time recover for a breach of the covenant in his deed. In this case patents or patent certificates had been issued to the State for the railroad company, and it is stated in the opinion that these patents were void and that purchasers under them acquired no title. But it is obvious that the decision must have been the same whether the patents were void or voidable. That question was not material to the decision, and what was said upon it was unnecessary to the determination of the case. Moreover, it is a common practice of legislatures and courts to use the words void and voidable interchangeably where the distinction between them is not material to the question or case under consideration, and it was in this way that the word void was used in Burr v. Greeley. The question now before us was neither argued, considered, nor decided in that case, and we enter upon its consideration in this case for the first time.

The question is, were the certificates of the officers of the Land Department absolutely void, so that they conveyed no title, legal or equitable, and so that they were constantly open to collateral attack? All the lands certified for the Winona Company were within the place limits of its grants. The grants were in praesenti, and they attached upon the filing of its maps of the definite location of its line opposite to the lands. The certificates were evidence that the officers of the Land Department had adjudged that the grants to the Winona Railroad Company had attached to the lands in controversy, and their legal effect was the same as though patents to the State had been issued for the benefit of that company. (Frasher v. O'Connor, 115 U. S., 102, 166; Curtner v. United States, 149 U. S., 662, 675.)

A patent issued by the officers of the Land Department of the United States, in a case within the scope of their power or jurisdiction, is dual in its effect. It is an adjudication of those officers that the patentee is entitled to the land under the laws of the United States and it is a conveyance of the title to that land to the patentee.

By the act of March 3, 1849 (9 Stat., ch. 108, sec. 3, p. 395; sec. 441 Rev. Stat.), the Secretary of the Interior is charged with the supervision of the public business of the United States relating to the public lands, and by the act of March 3, 1857, supra, as amended by the act of May 12, 1864, supra, the power was conferred and the duty imposed upon him to indicate the lands granted to the Winona Railroad Company by those acts of Congress in all cases. By the act of July 4, 1836 (5 Stat., ch. 352, sec. 1; sec. 453 Rev. Stat.), the Commissioner of the General Land Office is required to "perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in any wise respecting such public lands, and, also, such as relate to private claims of land and the issuing of patents for all [agents] [grants] of land under the authority of the Government."

The Land Department of the United States, then, including in that term the Secretary of the Interior, the Commissioner of the General Land Office, and their subordinate officers, constitutes a special tribunal under these and other provisions of the laws of the United
740 States, vested with the judicial power to hear and determine the claims of all parties to the public lands it is authorized to dispose of, and to execute its judgments by conveyances to the parties entitled to them. When a claim under a grant for a railroad company is made to a portion of the public lands under its control, that tribunal must determine whether or not the claimant is the beneficiary of the grant, whether or not it has so far complied with its conditions that it is entitled to its benefits, whether or not the public land claimed is a portion of the grant, and whether or not any other party has a superior right to it. When a claim is made under the homestead or preemption laws for a portion of the public domain that is subject to its disposition, that tribunal must determine whether or not the claimant is qualified to acquire lands under the terms of those laws, whether or not the land claimed was subject to preemption or to entry for a homestead, and whether or not the complainant has so complied with the requirements of those laws as to entitle him to the title to the land. Similar questions must be heard and determined by that Department whenever any portion of the public land subject to disposition by that tribunal is sold or otherwise disposed of in any way. In every case there must, in the nature of things, be a decision of questions of fact and of questions of law, because in every case the ultimate question is whether or not the facts proved show that the claimant is entitled to the land, under the acts of Congress. A certificate or patent is the record evidence of the judgment of this tribunal, and it necessarily follows that when such a judgment is rendered in a case within the jurisdiction of the Land Department it is, like the judgments of other special tribunals vested with judicial powers, impervious to collateral attack. As was said in Moore v. Robbins, 96 U. S., 530, 533:

"It is a part of their [the officers of the Land Department] daily business to decide when a party has, by purchase, by preemption, or by any

other recognized mode, established a right to receive from the Government a title to any part of the public domain. This decision is subject to an appeal to the Secretary if taken in time; but if no such appeal be taken and the patent issued under the seal of the United States and signed by the President is delivered to and accepted by the party the title of the Government passes with this delivery."

These propositions are not seriously questioned by counsel for the Government, but his contention is that the Land Department was without jurisdiction to decide whether these lands fell within the grants to the railroad company and rightly belonged to it or were excepted from these grants and were open to preemption, homestead, and purchase by other parties. And he maintains that since this Department was without jurisdiction to decide this question the certificates to the State which it delivered were issued without authority and were absolutely void. In support of these views he has cited many authorities from the decisions of the Supreme Court, but a careful examination of these decisions has convinced us that they do not rule this case. They are cases in which the power to hear and determine the claims of the parties to the land in controversy and to convey it to the rightful claimant was not vested in the Land Depart-
741 ment when it rendered its decision and made its conveyance. They are cases in which the title to the land patented or certified had passed out of the Government, and hence was not within the jurisdiction of the officers of the Land Department when that tribunal decided and attempted to convey it as in Polk v. Wendall, 9 Cranch, 87; Stoddard v. Chambers, 2 Howard, 284, 318; Easton v. Salisbury, 21 Howard, 426, 432; Reichart v. Felps, 6 Wall., 160; Best v. Polk, 18 Wall., 112, 117, 118; Sherman v. Buick, 93 U. S., 209; Lake Superior Ship Canal Railway and Iron Co. v. Cunningham, 15 Sup. Ct. Rep., 103, ... U. S., ...; or cases in which the land was reserved from sale or disposition by the Land Department until a claim under a Mexican or Spanish grant should be determined, and the power to determine the extent and validity of this claim had been conferred upon tribunals other than the Land Department, and the final decisions of those tribunals had not been made when the claim of the patentee was initiated, as in Doolan v. Carr, 125 U. S., 618, 624, 632; or cases in which the land had been set apart as a portion of a military or other like reservation and had thus ceased to be a part of the public domain subject to sale or other disposition by the officers of the Land Department, as in United States v. Stone, 2 Wall., 525, 527, and Wilcox v. Jackson, 13 Peters, 496, 511. In all these cases the land that was the subject-matter of the patents or certificates and the rights of the claimants to it were not subject to the jurisdiction of the Land Department. That Department had no jurisdiction to hear and determine these claims or upon such determination to dispose of the lands.

On the other hand, in every case to which our attention has been called in which the power to hear and determine the claims of applicants for lands of the United States, and upon such determination to dispose of those lands, either under the preemption or homestead laws, under grants for railroads or other corporations, or by sale, or in any other recognized mode, has been vested in the Land Department, the Supreme Court has uniformly held that the patent or certificate issued from the Department

conveyed the legal title and was not subject to collateral attack. (Minter et al. v. Crommelin, 18 Howard, 87, 89; United States v. Schurz, 102 U. S., 378, 401; French v. Fyan, 93 U. S., 169, 172; Quinby v. Conlan, 104 U. S., 420; Smelting Company v. Kemp, 104 U. S., 636, 645, 646, 647; Steel v. Smelting Company, 106 U. S., 447, 450, 452; Heath v. Wallace, 138 U. S., 573, 585; Knight v. United States Land Association, 142 U. S., 161, 212; Nobles v. Union River Logging Railroad, 147 U. S., 174; Barden v. Northern Pacific Railroad Company, 154 U. S., 288.)

The distinction between the two classes of cases is well illustrated by Best v. Polk, 18 Wall., 112, 117, 118, and Minter et al. v. Crommelin, 18 Howard, 89. In the former case a tract of land was sold by the Land Department and patented to a purchaser in 1847. But a Chickasaw chief had perfected his title to this land in 1839 under the provi-
742 sions of a treaty between the United States and the Chickasaw Indians. The Supreme Court held the patent void because the title to the land had passed out of the United States before the claim of the patentee was initiated, and hence the officers of the Land Department had no jurisdiction over the subject-matter of the patent. But in the latter case the land patented to a preemptor had been reserved by act of Congress to a Creek warrior, but the act provided that if the warrior abandoned his reservation it should be forfeited, and the Secretary of the Interior might order its sale. The Supreme Court held that the patent was prima facie evidence that the warrior had abandoned his reservation, that the Secretary had ordered the sale, and that the legal title had passed to the preemptor.

Another striking illustration of this distinction is found in Doolan v. Carr, 125 U. S., 618, 690, and Quinby v. Conlan, 104 U. S., 420. In the former case, the plaintiff, Carr, brought ejectment in reliance upon a title derived from a patent issued to the Central Pacific Railroad Company in 1874 under the Pacific Railroad acts. Those acts excepted from their grants to the railroad company the lands claimed under Mexican or Spanish grants. By the act of March 3, 1851 (10 Stat., 246), a commission had been created to determine the extent and validity of such claims under Mexican grants. An appeal was allowed by that act from the decision of the commission to the district court of California, and from the decision of that court to the Supreme Court of the United States. The land patented to the Central Pacific Railroad Company in that case was within the limits of a claim under a Mexican grant which was in litigation before some of these tribunals when the grants were made to the Central Pacific Railroad Company, and when the line of its railroad was definitely fixed, and the claim under the grant was finally sustained by the Supreme Court long after those dates. The jurisdiction to hear and determine the claim to this land under the Mexican grant had been conferred by this act of Congress upon tribunals other than the Land Department, and the court held that the patent to the railroad company issued by that Department was absolutely void and its action in the premises without jurisdiction or authority. But in Quinby v. Conlan, an action of ejectment, the patent under which the plaintiff claimed was attacked by an attempt to show that the land was within a reservation

under a Mexican grant when the rights of the preemptor were initiated. The determination of that question depended upon whether or not the public surveys had been extended over the land and whether or not other land had been taken by the claimant under the Mexican grant in satisfaction of it. The Supreme Court held that the patent was a conclusive determination of this question and could not be collaterally attacked, because "the question whether the land had been so freed from the reservation under the Mexican grant as to be open to settlement and preemption depended upon matters disclosed by records of proceedings in the Land Department," and that Department had the jurisdiction to determine those questions.

In Steel v. Smelting Company, 106 U. S., 447, 451, an action of ejectment, the plaintiff's title depended upon a patent issued upon a
743 claim for mineral lands within the limits of a town site, and the defense was that the patent was void because the land was not mineral and the patentee was not a citizen and had not declared his intention to become one. The Supreme Court held that proof of these facts was inadmissible to attack the patent, and declared that the Land Department "must necessarily consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is unassailable, except by direct proceedings for its annulment or limitation." To the same effect are Heath v. Wallace, 138 U. S., 572, 575, and Barden v. Northern Pacific Railroad Company, 154 U. S., 288.

In French v. Fyan, 93 U. S., 169, 172, the Supreme Court held that parol evidence was inadmissible to show that land patented to the State of Missouri as swamp and overflowed land never was in fact swamp or overflowed land, and that therefore the patent was void. In Ehrhardt v. Hogaboom, 115 U. S., 67, 69, that court held that parol evidence was inadmissible to show that land patented to a preemptor was swamp or overflowed land and was therefore included in the grant to the State of California, and that the patent to the preemptor was consequently void. The Supreme Court held in these cases that the acts of Congress devolved upon the Land Department the duty and conferred upon it the power to determine what lands were of the description granted by the acts of Congress, and that its decision on that subject was impregnable to collateral attack.

These authorities, and those above cited which we have not reviewed, perhaps sufficiently illustrate the distinction betweeen the cases in which the Land Department has acted upon a subject-matter within and one without its jurisdiction. A careful study and analysis of these decisions will show that none of them are inconsistent with the following rules:

1. A patent or certificate of the Land Department to land over which that Department has no power of disposition and no jurisdiction to determine the claims of applicants for, under the acts of Congress, is absolutely void and conveys no title whatever. Land the title to which had passed from the Government to another party before the claim on which the patent is based was initiated, land reserved from sale and disposition for military and other like purposes, land reserved by a claim under a Mexican or Spanish grant sub judice, and land for the disposition of

which the acts of Congress have made no provision is of this character. (Polk v. Wendall, 9 Cranch, 87, and cases cited under it supra.)

2. A patent or certificate of the Land Department to land over which that Department has the power of disposition and the jurisdiction to determine the claims of applicants for, under the acts of Congress, is impregnable to collateral attack, whether the decision of the Department is right or wrong, and it conveys the legal title to the patentee or to the party named as entitled to that title in the patent or certificate. (Minter et al. v. Crommelin, 18 Howard, 87, 89, and cases cited under it supra.)

744 3. A court of equity may, in a direct proceeding for that purpose, set aside such a patent or certificate, or declare the legal title under it to be held in trust for one who has a better right to it, in cases in which the action of the Land Department has resulted from fraud, mistake, or erroneous views of the law. (Bogan v. Edinburgh American Land Mortgage Company, 63 Fed. Rep., 192, 195; Cunningham v. Ashley, 14 Howard, 377; Barnard's Heirs v. Ashley's Heirs, 18 Howard, 43; Garland v. Wynn, 20 Howard, 6; Lytle v. State of Arkansas, 22 Howard, 193; Lindsey v. Hawes, 2 Black, 554, 562; Johnson v. Towsley, 13 Wall., 72, 85; Moore v. Robbins, 96 U. S., 538; Bernier v. Bernier, 147 U. S., 242; Mullan v. United States, 118 U. S., 271, 278, 279; Moffat v. United States, 112 U. S., 24.)

It is not difficult to determine whether the certificates issued in this case were void or voidable when tested by these rules. Jurisdiction of the subject-matter is the power to deal with the general abstract question, to hear the particular facts in any case relating to this question, and to determine whether or not they are sufficient to invoke the exercise of that power. The test of jurisdiction is whether the tribunal has power to enter upon the inquiry, not whether its conclusion in the course of it is right or wrong. (Foltz v. St. Louis & S. F. Ry. Co., 60 Fed. Rep., 316, 318, and cases cited.)

When these certificates were issued the Winona Railroad Company had undoubtedly applied to the Land Department for conveyances of the lands in controversy to the State for its benefit. These lands were a part of the public lands of the United States, the disposition of which had been entrusted to that Department by the acts of Congress which established it and defined the powers and duties of its officers. Moreover, the acts of Congress under which the Winona Company claimed these lands expressly provided, as we have seen, that the Secretary of the Interior should indicate the lands granted under them in all cases. The conclusion is irresistible that these acts conferred the power and imposed the duty upon the officers of the Land Department to hear and determine the ultimate question whether or not the railroad company was entitled to these lands under its grants, and to "indicate" the lands granted by certificates or patents to the State. In no other way could they have discharged the duties these acts imposed upon them. In deciding this question they necessarily considered whether or not the railroad company had so far complied with the acts granting the lands that it had earned them, the character of the lands themselves and the class to which they belonged, the time of the definite location of the line of the railroad, the homestead entries and preemption filings that were then upon the lands,

the cancelation of all these entries and filings that had been made, and, finally, the legal effect of all these and all other material facts upon the claim of the railroad company to receive the lands under the acts of Congress. It now appears that they were mistaken as to the legal effect of these facts, but the question they decided was one which the acts of Congress authorized and required them to decide, one which they were obliged to decide before they issued the certificates, and although
745 their decision and their conveyances evidenced by these certificates may be voidable they are not absolutely void. They are impregnable to collateral attack, and they conveyed the legal title to the lands to the State and its grantees.

The next question is whether or not the United States had any equitable right to these lands superior to that of bona fide purchasers who acquired the legal title to them from the railroad company before the Government gave any notice of the mistake of its officers or of its claim to recover the lands. This is not a debatable question. The equities of the United States appeal to the conscience of the chancelor with the same, but with no greater or less force than those of an individual under like circumstances. Bona fide purchasers are the especial favorites of courts of equity. In Boone v. Chiles, 10 Peters, 176, 209, Mr. Justice Baldwin, in delivering the opinion of the supreme court, said:

"A court of equity can act only on the conscience of a party; if he has done nothing that taints it, no demand can attach upon it so as to give any jurisdiction. (Sugden on Vend., 722.) Strong as a plaintiff's equity may be, it can in no case be stronger than that of a purchaser who has put himself in peril by purchasing a title and paying a valuable consideration without notice of any defect in it or adverse claim to it; and when, in addition, he shows a legal title from one seized and possessed of the property purchased, he has a right to demand protection and relief (9 Ves., 30–4), which a court of equity imparts liberally."

In United States v. Burlington, &c., Railroad Company, 98 U. S., 334, 342, a suit in equity brought by the United States to annul certain patents issued by it to the railroad company for alleged errors of the Land Department in the construction of the acts of Congress under which the patents were issued, Mr. Justice Field in delivering the opinion of the Supreme Court declared that the Government certainly could not insist upon a cancellation of the patents so as to affect innocent purchasers under the patentees." To the same effect are United States v. California, &c., Land Co., 148 U. S., 31, 41, and United States v. Wenz, 34 Fed. Rep., 154.

The equitable right of the United States to recover these lands is not exceptionally strong in this case. If its Land Department had decided that the railroad was not entitled to them, when it decided to the contrary the company would have been entitled to an equal number of acres within its indemity limits in lieu of them, so that the company obtained no more land that it was entitled to, although what it did obtain was undoubtedly somewhat more valuable than the land within its indemnity limits which it should have received. But the right of the Government, in order to secure this difference in value, to recover these lands now, when lands in lieu of them can no longer be found within the indemnity limits to fill this grant, when the certificates of its Land

Department have stood unchallenged for from thirteen to eighteen years,
and when purchasers under these certificates have bought, improved,
746 and paid taxes on these lands, is far inferior to the equities of
such purchasers and ought not to prevail against them.

The counsel for the Government, however, argues that the purchasers who hold the legal title to these lands were not necessary parties to this suit; that the United States is entitled to a decree canceling the certificates as against the railroad company under the provisions of the act of 1887, regardless of the rights of the subsequent purchasers, and that the relief given to these purchasers by the act, through applications to the Land Department, excludes them from all other rights and remedies. But there is nothing in the act of 1887 to support this contention. The rights and remedies these purchasers are pursuing in these suits existed in the absence of the act of 1887. There is nothing in that act that indicates any intention on the part of Congress to deprive them of any defenses or rights they then had under the well-established rules of equity jurisprudence. On the other hand, that act grants them additional privileges and proves that they are especial favorites of Congress as well as of courts of equity. Under the settled rules of practice in equity the holders of the legal title to these lands were indispensable parties to a suit to annul that title, and the fact that the holders of that title were bona fide purchasers of it for value, without notice of its defects, was a perfect defense to this suit.

The third assignment of error to be considered is, that the appellees who hold this title as the direct or remote grantees of the railroad company are not in fact bona fide purchasers. This presents a question of fact which the circuit court has decided against the appellant after a full consideration of the evidence. The finding of that court is presumptively correct, and unless an obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence, it should be permitted to stand. (Warren v. Burt, 7 C. C. A., 105, 110, 58 Fed. Rep., 101, 12 U. S. App., 591; Tilghman v. Proctor, 125 U. S., 136; Kimberly v. Arms, 129 U. S., 512; Evans v. Bank, 141 U. S., 107; Furrer v. Ferris, 145 U. S., 132, 134.)

According to Mr. Pomeroy, "The essential elements which constitute a bona fide purchaser are therefore three—a valuable consideration, the absence of notice, and presence of good faith." (2 Pom. Eq. Jur., sec. 745.) On October 31, 1867, Barney and his associates were the owners of the stock of the Winona Railroad Company. On that day they sold their stock in the railroad company to the owners of the Chicago & Northwestern Railway Company, and at the same time bought of the Winona Company as many of its lands as should be received by it on account of the one hundred and five miles of its railroad that had then been built. They took the agreement of the Winona Railroad Company to procure the certification of these lands from the United States, and to convey them to the parties to be designated by themselves, and they agreed to take in satisfaction of this contract all the lands that
should be received by said company, commencing at its eastern
747 terminus and proceeding westerly until the full quantity was
obtained. They paid the railroad company in full for these lands on that day by satisfying a debt the company owed them for construct-

ing the one hundred and five miles of railroad and for money they had loaned to it, and by assigning the stock of the railroad company to those in control of the Chicago and Northwestern Company. Here was a valuable consideration fully paid by Barney and his associates. The satisfaction and discharge of the indebtedness of the railroad company to them was in itself a sufficient and a valuable consideration for this purchase. (Railroad Company v. National Bank, 102 U. S., 14, 24.)

Between 1867 and 1876 the Land Department of the United States indicated and certified to the State all but six hundred and eighty acres of these lands, and it certified the remaining six hundred and eighty acres prior to 1880. The appellee, The Winona and St. Peter Land Company, was organized in 1876. Barney and his associates or their successors in interest under the contract of October 31, 1867, sold the lands covered by that contract which had not already been sold to purchasers from them to this land company for its capital stock, which aggregated five hundred thousand dollars. Here again was a sufficient and valuable consideration paid for these lands by the land company. And it is clear that the first essential element of a bona fide purchase inhered in both the purchase of Barney and his associates in 1867 and in that of the land company in 1876.

Did they purchase in the absence of notice of defects in the title? Before 1881 the railroad company had conveyed to the parties entitled to them, under the contract of October 31, 1867, all the lands in controversy except two hundred and forty acres that had been certified to the Sioux City Company, and except the lands conveyed to the land company on November 20, 1887, in obedience to the decree of the court in Winona & St. Peter Railroad Company v. Barney. The decree in that case, that these lands should be so conveyed, was rendered in the circuit court in April, 1881. It was afterwards affirmed on appeal. But so far as the question of notice to these purchasers is concerned there was no change in the status of affairs from 1867 until after the decision of the Supreme Court in Kansas Pacific Railway Company v. Dunmeyer in 1884. When Barney and his associates purchased these lands in 1867 only three hundred and twenty acres of them had been certified to the State, and the evidence is plenary that none of these purchasers had any notice of any defects in the title to any of these lands. After 1867 they did not own the stock of the railroad company or control its operation. They paid for the lands in that year. They could not then have had any notice or knowledge that the Secretary of the Interior would subsequently indicate, and that the company would in 1872 and in subsequent years receive, lands to which it was not entitled under its grants. They and their successor in interest, the land company, were bound under their contract to take the lands received by the railroad company from the United States,

748 and the railroad company was bound by its contract to apply for and to obtain the lands it had earned. But it was not the land company, nor was it Barney and his associates, that applied for and procured the certificates of these lands to the State in the years between 1870 and 1880. It was the railroad company, which had then passed beyond their control. There is no doubt that the railroad company applied for, and the officers of the Land Department certified, the lands here in question in the utmost good faith. They all believed that the

railroad company was entitled to them. But, after all, it was their mistake and not that of Barney and his associates or that of the land company that caused the railroad company to receive, and to vest in the land company the title to these lands that the railroad company was not entitled to, instead of an equal number of acres within its indemnity limits which it should have received. The evidence in this record that neither the land company nor Barney nor any of his associates had any notice or knowledge of this mistake or of any claim of the United States to any of these lands until long after they had paid the full consideration for their respective purchases is very persuasive. Indeed, the United States itself did not discover it until 1884, eight years after the land company had fully paid for the lands. Up to that time the officers of the Land Department had uniformly held that the railroad company had earned and was entitled to these lands under the acts of Congress. In Hastings, &c., Railroad Co. v. Whitney, 132 U. S., 357, 366, the Supreme Court said of the action of these officers in a similar case:

"It is true that the decisions of the Land Department on matters of law are not binding upon this court in any sense. But on questions similar to the one involved in this case they are entitled to great respect at the hands of any court. In United States v. Moore, 95 U. S., 760, 763, this court said: 'The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. * * * The officers concerned are usually able men and masters of the subject. Not unfrequently they are the draftsmen of the laws they are afterwards called upon to interpret.'" (See also Brown v. United States, 113 U. S., 568, 571, and cases cited; United States v. Burlington, &c., Railroad, 98 U. S., 334, 341; Kansas Pacific Railroad v. Atchinson Railroad, 112 U. S., 414, 418.)

It is no wonder that purchasers of this title rested in fancied security on a title sustained by decisions to which the Supreme Court pays such respect. The testimony of the witnesses and the circumstances surrounding these transactions force us to the conclusion that the second essential element of a bona fide purchaser, absence of notice of defects in their title, was not absent from the purchase by Barney and his associates nor from the purchase by the land company.

Nor was the element of good faith lacking. There is no evidence of any fraud or of any conspiracy, or of any attempt on the part of any of the parties connected with this transaction to obtain for the railroad company or for themselves any lands to which they were not justly entitled. The officers of the railroad company supposed that that company had earned and was entitled to the lands it applied for and received. The officers of the Land Department, to whom the
749 Government had entrusted the duty of deciding the question, so held, and Barney and his associates and the land company accepted the title to the lands in good faith in satisfaction of the executory contract to convey them, for which they had fully paid as early as 1876. They or their grantees or appointees, under the contract of 1867, were clothed with the legal title to all these lands years before the United States made any claim to recover them. It goes without saying that those who hold any of these lands under deeds, contracts, or designations

made by Barney and his associates or the land company are as fully protected as they are, and we think the character of bona fide purchasers ought not to be denied to any of them.

A single question remains for consideration: Were the lands within the place limits of the grants to the Winona Company and within the indemnity limits of the grants to the Sioux City Company, upon which homestead entries and preemption filings that were subsequently canceled by the proper officers of the Land Department existed at the time of the definite location of the line of the railroad of the Winona Company, rightfully certified to the State for the Sioux City Company by the officers of the Land Department?

Section one of the act of March 3, 1857, grants to the Territory of Minnesota, for the purpose of aiding in the construction of the railroads of these two companies, "every alternate section of land, designated by odd numbers, for six sections in width on each side of each of said roads and branches; but in case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of preemption has attached to the same, then it shall be lawful for any agent, or agents, to be appointed by the governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold, or otherwise appropriated, or to which the rights of preemption have attached, as aforesaid; * * * Provided, That the land to be so located shall, in no case, be further than fifteen miles from the lines of said roads or branches; * * * And provided further, That any and all lands heretofore reserved to the United States, by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroads and branches through said reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

Section 2 of that act provides: "That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads and branches, shall not be sold for less than double the minimum price of the public lands when 750 sold; nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale at the increased price." (11 Stat., ch. 99, p. 195.)

Section 7 of the act of May 12, 1864, grants to the State of Minnesota, for the purpose of aiding the construction of the railroad of the Sioux City Company, four additional alternate sections of land per mile, to be located within twenty miles of the line of its road, and to be selected upon the same conditions, restrictions, and limitations as are contained in the act of March 3, 1857. Section 1 contains the same proviso that we have just quoted from section 1 of the act of 1857 relating to the reservation from the operation of the act of lands theretofore

reserved by the United States to aid in any object of internal improvement or for any other purpose. And section 2 of that act contains the same provision as section 2 of the act of 1857 increasing the price of the land remaining within the place limits of the grant to double the minimum price. (13 Stat., p. 72.)

It is contended that the proviso in section 1 of the act of March 3, 1857, and in section 1 of the act of May 12, 1864, which treats of lands reserved for internal improvement and for other purposes, expressly reserved the lands within the place limits of the Winona Railroad Company, subject to homestead entries and preemption filings, not only from the grant to that company but from the entire operation of these acts. The argument is, (1) that these lands were excepted from the grant to that company by the earlier provisions of section 1 of the act of 1857, and that they were thereby reserved to the United States, within the meaning of this proviso, for homesteads and preemptions; and (2) that by section 2 of the act of 1857 their price was increased to double the minimum price, and thereby they were reserved to the United States for sale. The argument is specious, but we think it is unsound. The proviso which closes section 1 has no reference whatever to lands "sold and to which preemption rights have attached." Those lands had been excepted from the granted lands, and their treatment had been concluded in the earlier part of the section. They were treated as the purchasers and of the preemptors, and not as the property of the United States, and they were excepted from the granted lands because in equity they were no longer its property. The proviso treated, not of these lands, but of lands reserved to the United States by acts of Congress for its works of internal improvement, for its military purposes, for sale, or for any other like purpose. This is made clear by the latter clause of the proviso, which grants the necessary right of way over these lands to the respective railroad companies, subject to the approval of the President. It was not over lands sold or to which preemption rights had attached that Congress intended to grant this right of way, but over lands of the United States upon which other parties had no claims as purchasers or preemptors.

The same considerations lead irresistibly to the conclusion that the provisions in section 2 increasing the price of the sections remaining to the United States within the place limits of the grant, have no application to the odd sections subject to homestead entries and preemption filings. This section provides that the price of the lands it refers to shall be double the minimum price, and that none of them shall be subject to private entry until they have been offered for sale at the increased price. Congress certainly did not intend to increase the price of lands sold or claimed by preemptors or to prevent their entry until they were offered for sale at double the minimum price. They were not legislating concerning these lands. They were dealing with sole reference to the even-numbered sections within the place limits of the grant, the sections which the United States had reserved to itself for sale, and this section has no reference to any other lands. For the same reasons the provisions of sections 1 and 2 of the act of 1864 have no application to the lands in controversy. (United States v. Missouri, &c., Railway Co., 141 U. S., 358, 367, 370, 371.)

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The question recurs, were these lands excepted from selection as indemnity lands by the Sioux City Company by that portion of section 1 of the act of 1857 preceding the proviso we have considered? There is a wide difference in legal effect between the grant of lands in place and the grant of the right to select and receive lands in lieu of those in place which are sold or otherwise appropriated at the time the line of the railroad is fixed. Until the line of the railroad is definitely fixed the former is in the nature of a float, but the instant the railroad company files with the Secretary of the Interior its map of the definite location of its line, the lands within the primary or place limits are thereby identified and segregated from the public domain, and the grant of those lands takes effect as of the day of the date of the act of Congress which bestows it. (Smith v. Northern Pacific Railroad Company, 7 C. C. A., 397, 406; Railroad Company v. Baldwin, 103 U. S., 426; Grinnell v. Railroad Company, 103 U. S., 739; Railroad Company v. Dunmeyer, 113 U. S., 629; St. Paul & Pacific Railroad Company v. Northern Pacific Railroad Company, 139 U. S., 1; Sioux City, &c., Land Company v. Griffey, 143 U. S., 32.)

Moreover, since the lands within the place limits are identified by the definite location of the line, no lands within those limits that are not then subject to the grant become or ever can become a part of it. Lands sold or appropriated and lands to which preemption rights have at that time attached are excluded from these granted lands as completely as though they were excepted in a deed. (Railroad Company v. Dunmeyer, 113 U. S., 629; Burr v. Greeley, 3 C. C. A., 357; 52 Fed. Rep., 926; 10 U. S. App., 409.)

But these rules have no application to the right to select lands without the place limits in lieu of those excepted from the grant of lands within them. The act of 1857 provides that if it shall appear that any of the lands within the primary limits have been sold by the United States or otherwise appropriated, or that preemption rights have attached to any of them when the line of the railroad is definitely fixed, any agent appointed by the governor of the State may select, from the lands of the United States, subject to the approval of the Secretary of the Interior, an equal quantity of lands within the indemnity limits of the grant.

Ordinarily it will not "appear" at the time the line of the road is
752 definitely fixed how many acres of land or what lands are excepted from the grant of lands in place by sales, appropriations, or the rights of preemptors. When the grant is extensive, and especially when, at the time of the definite location of the line, the region through which it extends is a well-settled agricultural country, crossed by conflicting land grants, many years may be required to ascertain what and how many lands are thus excepted from the primary grant. When this has been discovered, time will be required to make the selections. The history of the grants under consideration furnishes a striking illustration of these facts. During all this time the grant of the indemnity lands is in the nature of a float. The right to select these lieu lands cannot be exercised until the deficiency of the lands granted appears. The selection may then be made from any of the lands of the United States within the indemnity limits of the grant, and when such a selection is made and approved, the grant for the first time attaches to any specific lands within those limits. (Kansas Pacific Railroad Company v. Atchison

Railroad, 112 U. S., 414, 421; Barney v. Winona & St. Peter Railroad, 117 U. S., 228, 232; Sioux City & St. Paul Railroad Co. v. Chicago, Milwaukee & St. Paul Ry. Co., 117 U. S., 406, 408; Wisconsin Central Railroad Company v. Price County, 133 U. S., 496, 511; United States v. Missouri, Kansas & Texas Railway, 141 U. S., 358, 371.)

The grant of lands for the Sioux City Company then attached to specific lands within its place limits when the line of its railroad was definitely located opposite to them, but the grant of indemnity lands first attached to specific lands when they were selected and their selection was approved by the Secretary of the Interior. Accordingly, the lands subject to the grant within the place limits were those that were public lands when the line of the road was definitely fixed, the lands that were not then sold, otherwise appropriated, or subject to preemption rights, and the lands subject to the grant within the indemnity limits were those that were public lands when they were selected and their selection was approved, the lands that at that time were not sold, otherwise appropriated, or subject to preemption rights. (Ryan v. Railroad Company, 99 U. S., 382; Cedar Rapids, &c., Railroad Company v. Herring, 110 U. S., 27, 38, 39; St. Paul Railroad v. Winona Railroad, 112 U. S., 720, 730, 731; Sioux City & St. Paul Railroad Company v. Chicago, Milwaukee & St. Paul Ry. Co., 117 U. S., 406; Wisconsin Central Railroad Company v. Price County, 133 U. S., 496, 513.)

In Kansas Pacific Railroad Company v. Atchison Railroad Company, 112 U. S., 414, lands which were within the indemnity limits of a grant to the State of Kansas for the Atchison, Topeka & Santa Fe Railroad Company, under the act of March 3, 1863 (12 Stat., 772), were subsequently, and before they were selected by the Atchison Company, granted as lands in place to the predecessor of the Kansas Pacific Railroad Company by the act of July 2, 1864. (13 Stat., 356.) The Supreme Court held that these lands were thereby withdrawn from the public lands subject to selection by the Atchison Company; that as they were not lands of the United States at the time it attempted to make its selection, it was immaterial that they had been such when the act was passed which made the grant.

753 On the other hand, in Ryan v. Railroad Company, 99 U. S. 382, 388, a tract of land in the indemnity limits of the grant to the California & Oregon Railroad Company under the act of July 25, 1866 (14 Stat., 239), was, at the date of the act and at the time of the definite location of the line of the railroad, subject to a claim for a Mexican grant sub judice. If this tract had been within the place limits of the grant to the railroad company, it would certainly have been excepted from it. On March 3, 1873, the claim for the Mexican grant was finally rejected. On March 30, 1874, the successor in interest of the California & Oregon Railroad Company selected this tract as a part of its indemnity lands and obtained a patent for it. The Supreme Court held that the tract became a part of the public lands of the United States when the claim under the Mexican grant was finally rejected, that it was therefore public land when the selection was made, that it was immaterial that it had been subject to the Mexican grant when the act was passed, and that it was lawfully selected and rightfully patented.

The same effect must be given to the selection and certification of these indemnity lands to the Sioux City Company. It was immaterial that

there were homestead entries and preemption filings upon them when the act of 1857 was passed, or when the line of the railroad was definitely fixed. When these homestead entries and preemption filings had been duly canceled, the lands became a part of the public domain of the United States, subject to selection by, and certification to that company under its grants, and the lands were rightly certified to the State for the benefit of that company.

Finally, it is insisted, that inasmuch as in a case between the Winona Company and the Sioux City Company (St. Paul Railroad v. Winona Railroad, 112 U. S., 720), in which the questions we have been considering were not presented, a decree was made and executed which transferred these lands to the Winona Company, when the Sioux City Company should have been permitted to retain them, the Winona Company can not in this action avail itself of the fact that they were properly certified to the Sioux City Company. The conclusive answer to this contention is, that this suit is based on the act of 1887. That act authorizes suit to cancel patents, certificates, or other evidences of title to lands "erroneously certified or patented," and "to restore the title thereof to the United States." (24 Stat., 556.) These lands were not erroneously certified or patented, the United States is not entitled to a restoration of the title, and it can not maintain a suit in equity to review the decision of a question of title between private parties which is res adjudicata between them and in which it has no interest.

The decree below must be affirmed without costs to either party in this court, and it is so ordered.

Filed May 6, 1895.

754 And on the sixth day of May, A. D. 1895, in the record of the proceedings of said circuit court of appeals, is a decree in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. May term, 1895.
Monday, May 6, 1895.

THE UNITED STATES OF AMERICA, appellant,
vs.
THE WINONA AND ST. PETER RAILROAD COMPANY, Winona and St. Peter Land Company, Minnesota Land and Investment Company, Samuel D. Peterson, Dorothea Wagner, Hans Knudson, John Groebner, Carl Piska, Henry G. Buessman, John W. Kolbe, John Girg, Claus Minert, Heinrich Dohrman, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Horman, Wolfgang Brandl, Wenzel Schiller, Emil Altermatt, Ludwig Remus, Jane McQuatt, Thomas McQuatt, William Strassburg, Michael Strum, and Charles Feirer, appellees.

No. 564. Appeal from the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause
755 be and the same is hereby affirmed without costs to either party in this court.

MAY 6, 1895.

And on the eighth day of July, A. D. 1895, a petition for appeal and assignment of errors was filed in the clerk's office of said circuit court of appeals, which, with the order allowing appeal thereon, is in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. May term, A. D. 1895.

UNITED STATES OF AMERICA, APPELLANT,
vs.
THE WINONA & ST. PETER RAILROAD COMPANY, The Winona & St. Peter Land Company, The Minnesota Land & Investment Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, Frank Schreopfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Herman, Wolfgang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus, appellees. } No. 564.

Petition for appeal.

Now comes the United States of America, appellant in the
756 above-entitled action, by Robert G. Evans, special assistant United States attorney, hereunto lawfully authorized and directed by the honorable the Attorney-General of the United States so to do, and conceiving itself aggrieved by the decree of said court, entered in above-entitled cause on the 6th day of May, 1895, doth hereby appeal from said decree to the Supreme Court of the United States; and said appellant prays that its said appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States. And further, appellant saith that the matter in controversy in this suit exceeds one thousand dollars ($1,000.00), besides costs, as shown by affidavit hereto attached and made a part hereof.

ROBERT G. EVANS,
Special Asst. U. S. Attorney, Counsel for Appellant.

Dated July 5th, 1895.

And now, to wit, on the 25th day of July, A. D. 1895,

It is ordered that the appeal in the above entitled cause be allowed as prayed for.

(Signed) WALTER H. SANBORN,
Judge of the United States Circuit Court of Appeals, Eighth Circuit.

United States circuit court of appeals, eighth circuit. May term, A. D. 1895.

UNITED STATES OF AMERICA, APPELLANT,
vs.
THE WINONA & ST. PETER RAILROAD COMPANY, The Winona & St. Peter Land Company, The Minnesota Land & Investment Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske,
757 John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, Frank Schroepfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Herman, Wolfgang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus, appellees. No. 564.

Affidavit.

STATE OF MINNESOTA,
County of Hennepin, ss:

Robert G. Evans, being duly sworn, upon oath says that he, as special assistant United States attorney, has had charge of the conduct of the above entitled cause; that the same involves the title to over two thousand (2,000) acres of land, situated in the State of Minnesota, of the value of at least ten thousand dollars ($10,000.00); and that the matter in controversy in the above-entitled action exceeds one thousand dollars ($1,000.00), besides costs.

ROBERT G. EVANS.

Subscribed and sworn to before me on this 5th day of July, A. D. 1895.

[SEAL.] ARTHUR M. KEITH,
Notary Public, Hennepin County, Minnesota.

758 United States circuit court of appeals, eighth circuit. May term, A. D. 1895.

UNITED STATES OF AMERICA, appellant,
vs.
THE WINONA & ST. PETER RAILROAD COMPANY, The Winona & St. Peter Land Company, The Minnesota Land & Investment Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, Frank Schreopfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Horman, Wolfgang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus, appellees. } No. 564.

Assignment of errors.

And now, in the foregoing entitled cause and at the time of filing therein of the foregoing attached petition for appeal, comes the said appellant, the United States of America, by Robert G. Evans, special assistant United States attorney, hereunto lawfully authorized and directed by the hon. Attorney-General of the United States, and says that in the records and proceedings in the above-entitled cause there is manifest error in this, to wit:

That the court erred—

1st. In holding that the action of the officers of the Land Department in certifying to the State of Minnesota for the benefit of the Winona & St. Peter Railroad Company the lands within the place limits of its grants on which homestead entries or preemption filings, which had subsequently been cancelled, existed at the time of the definite location of its line, though erroneous, was not absolutely void, but was merely voidable at the suit in equity of the party who had the better right to the title, and that the certifications those officers issued conveyed the legal title to the State and its grantees.

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2nd. In holding that the United States had no equitable right to the lands described in the bill of complaint superior to that of the bona fide purchasers who claimed to have acquired legal title through and under said railroad company before the United States gave any notice of the mistake of the officers of the Land Department in certifying said lands or of its claim to recover said lands.

3rd. In holding that the immediate and remote grantees of the Winona & St. Peter Railroad Company, who were parties to this suit, were bona fide purchasers of the lands bought by them respectively.

4th. In holding that the lands within the place limits of the grants to the Winona Company and within the indemnity limits of the grants to the St. Paul & Sioux City Company, upon which homestead entries and preemption filings, that were subsequently cancelled by the proper officers of the Land Department, existed at the time of the definite location of the line of the railroad of the Winona Company, were, after these cancellations were made, properly selected and rightfully certified to the Sioux City Company by the officers of the Land Department.

5th. In holding that the action of the officers of the Land Department in certifying lands to the State of Minnesota for the benefit of the Winona & St. Peter Railroad Company, which were in fact excepted from the operation of the grants in aid of that road, was within the jurisdiction of said officers, and that such certification conveyed any right or title whatever to the said railroad company and its grantees.

6th. In holding that the action of the officers of the Land Depart-
760 ment in certifying lands to the State of Minnesota for the benefit of the St. Paul & Sioux City Railroad Company, which were in fact excepted from the operation of the grants in aid of that road, was within the jurisdiction of said officers and that such certification conveyed any right or title to the said railroad company and its grantees.

7th. In holding that the lands in controversy having passed to bona fide purchasers, the United States can not, for this reason, recover in said action.

8th. In affirming the decree of the United States circuit court for the district of Minnesota.

Wherefore the said appellant prays that the decree of the said United States circuit court of appeals for the eighth circuit in the above entitled cause be reversed.

ROBERT G. EVANS,
Special Asst. U. S. Attorney, Counsel for Appellant.

Endorsed: "Original. No. 564. United States circuit court, district of Minnesota. United States of America, complainant, vs. Winona & St. Peter Ry. Co. et al., defendants. Petition for appeal, affidavit, and assignment of errors. Filed Jul. 8, 1895. John D. Jordan, clerk."

And on the thirty-first day of July, A. D. 1895, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the

original of which, with the admissions of service thereon, is in the words and figures following, to wit:

761 United States circuit court of appeals, eighth circuit. May term, A. D. 1895.

UNITED STATES OF AMERICA, appellant,
v.
THE WINONA & ST. PETER RAILROAD COMPANY, THE Winona & St. Peter Land Company, The Minnesota Land & Investment Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blaisus Haala, John Upson, John Stelzer, Frank Schreopfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Herman, Wolfang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus, appellees. } No. 564.

Citation.

UNITED STATES OF AMERICA, *ss:*

To the Winona & St. Peter Railroad Company, the Winona & St. Peter Land Company, the Minnesota Land & Investment Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, Frank Schreopfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Herman, Wolfang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus, greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, in the city of Washington, D. C., thirty days from and after the date hereof, pursuant to an appeal taken out of and allowed by the United States circuit court of appeals for the eighth circuit, wherein the United States of America is appellant and the Winona & St. Peter Railroad Company, the Winona & St. Peter Land Company, the Minnesota Land & Investment Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry
762 Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, Frank Schreopfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala,

Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Herman, Wolfang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus are respondents, to show cause, if any there be, why the decree in the said appeal mentioned should not be set aside and corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Walter H. Sanborn, judge of the United States circuit court of appeals for the eighth circuit, this 25th day of July, in the year of our Lord one thousand eight hundred and ninety-five.

WALTER H. SANBORN, *Judge.*

763 In the circuit court of appeals, eighth circuit. May term, A. D. 1895.

UNITED STATES OF AMERICA, APPELLANT,
v.
THE WINONA & ST. PETER RAILROAD COMPANY, The Winona & St. Peter Land Company, The Minnesota Land & Investment Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, Frank Schreopfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Herman, Wolfang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus, appellees. } No. 564.

Service of the original citation on appeal to the Supreme Court of the United States in the above-entitled cause, dated July 25th, 1895, from the decree of the United States circuit court of appeals, entered in said cause May 6, 1895, affirming the decree of the circuit court of the United States for the district of Minnesota, is hereby admitted.

Dated this 25th day of July, A. D. 1895.

GEO. W. SOMERVILLE,
Solicitor for Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Herman, Wolfgang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus.

764 In the circuit court of appeals, eighth circuit. May term, A. D. 1895.

UNITED STATES OF AMERICA, APPELLANT,
v.
THE WINONA & ST. PETER RAILROAD COMPANY, THE Winona & St. Peter Land Company, The Minnesota Land & Investment Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, Frank Schreopfer, Jacob Duncan, George Lent, George Ebilsisor, John Nowak, William Schultz, Edward Casey, John Haala, Christopher Mainzer, Joseph Sellner, Frederick Alwin, Ferdinand Trebisch, Wenzel Remiger, Frederick W. Herman, Wolfang Brandl, William Strassburg, Michael Strum, Charles Feizer, Wenzel Schiller, Emil Altermatt, and Ludwig Remus, appellees. No. 564.

Service of the original citation on appeal to the Supreme Court of the United States in the above-entitled cause, dated July 25, 1895, from the decree of the United States circuit court of appeals, entered in said cause May 6, 1895, affirming the decree of the circuit court of the United States for the district of Minnesota, is hereby admitted.

Dated this 25 day of July, A. D. 1895.

J. A. TAWNEY and H. M. LAMBERTON,
Solicitors for Winona & St. Peter Land Company, Heinrich Dohrman, Dorothea Wagner, Carl Piske, John W. Kolbe, Claus Meinert, John Groebner, Samuel D. Peterson, John Girg, Henry Benssman, Frank Augustin, Blasius Haala, John Upson, John Stelzer, and Frank Schroepfer.

Due service of the within citation is hereby admitted this 25th day of July, 1895.

THOS. WILSON,
WILSON & BOWERS,
Solicitors for Defendants, The Winona & St. Peter R. R. Co. & The Minnesota Land & Investment Co.

(Indorsed:) Original. Circuit court of U. S., district of Minnesota. United States of America, complainant, vs. The Winona & St. Peter Ry. Co. et al., defts. Citation. Filed Jul. 31, 1895. John D. Jordan, clerk.

765 United States circuit court of appeals, eighth circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing 764 pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in